EXHIBIT H

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Fair Isaac Corporation, a Delaware Corporation, Plaintiff, v. Federal Insurance Company, an Indiana corporation, and ACE American Insurance Company, a Pennsylvania Corporation, Defendants.	File No. 16-cv-1054(DTS) Courtroom 14W Minneapolis, Minnesota Wednesday, March 8, 2023 9:07 a.m.

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME XIII)

Proceedings recorded by mechanical stenography; transcript produced by computer.

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APPEARANCES:

For Plaintiff:

MERCHANT & GOULD P.C.
BY: ALLEN W. HINDERAKER
HEATHER J. KLIEBENSTEIN
PAIGE S. STRADLEY
MICHAEL A. ERBELE
JOSEPH W. DUBIS
GABRIELLE L. KIEFER
150 South Fifth Street, #2200
Minneapolis, Minnesota 55402

For Defendants:

FREDRIKSON & BYRON
BY: TERRENCE J. FLEMING
LEAH C. JANUS
CHRISTOPHER D. PHAM
RYAN C. YOUNG
PANHIA VANG
200 South Sixth Street, #4000
Minneapolis, Minnesota 55402

O'MELVENY & MYERS LLP
BY: LEAH GODESKY
ANTON METLITSKY
DARYN E. RUSH
ROXANA GUIDERO
Times Square Tower
7 Times Square
New York, New York 10036

Court Reporters:

RENEE A. ROGGE, RMR-CRR
KRISTINE MOUSSEAU, CRR-RPR
MARIA V. WEINBECK, RMR-FCRR
PAULA RICHTER, RMR-CRR-CRC
United States District Courthouse
300 South Fourth Street, Box 1005
Minneapolis, Minnesota 55415

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IN OPEN COURT

(JURY PRESENT)

THE COURT: Be seated, everyone.

(Off the record discussion)

THE COURT: All right. Let's go on the record.

You all have copies of the instructions in front of you. You are welcome to read along or put them aside and just listen. Either is fine.

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I'm going to give you additional instructions. You have to follow all of my instructions, the ones I gave you earlier, as well as those I give you now.

Do not single out some instructions and ignore others, because they are all important. This is true even though I'm not going to repeat some of the instructions I gave you at the beginning of or during the trial.

You will have copies of the instructions I'm about to give you now in the jury room. Remember, you have to follow all of the instructions, no matter when I gave them, whether or not you have written copies.

Burden of proof.

You must decide whether certain facts have been proved by the greater weight of the evidence, also called the preponderance of the evidence. A fact has been proved

by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase "proof beyond a reasonable doubt." That is a stricter standard than "more likely true than not true." It applies in criminal cases, but not in this civil case. So put it out of your mind.

Credibility of witnesses.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said or only part of it or none of it. You may consider a witness's intelligence, the opportunity the witness had to see or hear things testified about, a witness's memory, knowledge, education and experience, any reasons a witness might have for testifying a certain way, how a witness acted while testifying, whether a witness said something different at another time, whether a witness's testimony sounded reasonable and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection or a lapse of

memory or an intentional falsehood. That may depend on whether it has to do with an important fact or only a small detail.

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something or has failed to say or do something that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached, and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness has shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony, and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

You have heard testimony from several expert witnesses in this case: Neil Zoltowski, R. Bickley (Bick) Whitener, William McCarter and W. Christopher (Chris) Bakewell, all of whom testified to their opinions and the reasons for those opinions.

You should judge this testimony just as you would any other testimony. You may accept it or reject it and give it the weight you think it deserves, considering the witness's education and experience, the reasons given for

the opinion and all other evidence in the case.

Testimony has been presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony you have seen has been electronically videotaped and that recording played for you. You should consider the deposition testimony and judge its credibility as you would that of any witness who testifies here in person.

During the trial you have heard testimony from witnesses who appeared in their capacity as the parties' corporate designee. Those witnesses were authorized to speak on behalf of the organization about information known to the organization. Those witnesses were standing in the shoes of the organization and were not testifying as individual persons.

The following witnesses were designated to testify as their corporate representatives: Claudio Ghislanzoni, Henry Mirolyuz, John Taylor, William Waid.

Exhibit P1116 was introduced for a limited purpose. It is to be used only as evidence of when and how Mr. Waid learned of DWS's access to Blaze Advisor. You may only consider Exhibit P1116 for that purpose.

Some of the exhibits introduced during trial are software licensing agreements between FICO and companies

other than Federal. These agreements have been introduced for a limited purpose.

You may consider the agreements for whatever value they may have in your decisions about the hypothetical license negotiation, which you will hear about shortly. The agreements may also be used to illustrate other language that the parties might have used in their agreement.

The agreements, however, are not evidence of the parties' mutual intent as to the meaning of the software license agreement in this case.

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by books, records or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts.

If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and decide the facts from the books, records or other underlying evidence.

As you have heard, FICO seeks to recover damages for breach of contract. FICO had a contract with Federal, the license agreement, that set the terms under which Federal could use FICO's Blaze Advisor software.

FICO claims that Federal breached the contract by allowing unauthorized persons or entities to use the

software, by failing to obtain consent for the continued use of Blaze Advisor after the merger or by continuing to use Blaze Advisor after FICO terminated the agreement.

Federal claims that it did not breach the agreement. It claims the merger did not violate Section 10.8 of the agreement, that any use by unauthorized persons or entities was not a breach, and that FICO's termination of the agreement was ineffective and was itself a breach of the license agreement by FICO.

The party who claims breach of contract has the burden of proving by a preponderance of the evidence that it had a contract with the other party, that it did what it was required to do under the contract, that the other party breached the contract by not doing what it was required to do under the contract, and that the breaching party sustained damages because of the other's breach.

If you decide that Federal breached the license agreement in any of the ways FICO has alleged, you will find for FICO on its breach of contract claim, and you will go on to consider FICO's damages against Federal.

If you decide that Federal did not breach the license agreement, you will find for Federal on FICO's breach of contract claim.

If you decide that FICO breached the license agreement, as Federal as alleged, you will find for Federal

on its breach of contract claim, and you will go on to consider Federal's damages.

If you decide that FICO did not breach the license agreement, you will find for FICO on Federal's breach of contract counterclaim.

In this case the parties agree that the license agreement was a contract. It is for you to decide what the contract required of both parties, whether either party or both of them failed to do what they promised in their contract and the extent of damages suffered due to any breach that you find.

In determining the meaning of the license agreement, you should consider the plain meaning of the words in the license agreement, how a reasonable business person in this situation would have understood their meaning and what the parties here actually intended them to mean.

In determining the parties' intent, you may consider evidence of the parties' prior negotiations, the circumstances surrounding the formation of the license agreement and any other evidence you find that bears on that intent.

A breach is material if it substantially defeats the purpose of the agreement or where a party fails to perform a substantial part of the agreement, the performance of which was the initial inducement for entering the

agreement.

A material breach is one that goes to the root of the agreement between the parties. Performance by the non-breaching party is excused only if the breach is material or if the contract provides otherwise.

Where a breach is material, the non-breaching party is justified in terminating the contract. Where a breach is not material, the non-breaching party may be entitled to damages, but is not entitled to terminate the contract unless the contract specifically allows for termination without a material breach.

Both parties may be guilty of breaches, each having a right to damages.

If you find that Federal breached the license agreement, FICO was allowed to terminate the license agreement if that breach was material or if termination was expressly permitted by the contract.

For Federal's counterclaim, if you find that FICO breached the license agreement, Federal was only excused from performing under the contract if that breach was material.

Federal contends FICO breached the license agreement when it terminated the agreement without justification. If a party terminates an agreement without justification, that termination constitutes a material

breach. FICO contends it properly terminated the agreement.

As I previously instructed you, interpreting the license agreement is for you to decide. This is true except when the court has found that the agreement must be interpreted as a matter of law. The court has made two such findings in this case.

First, you will see references in the documents to a claim by FICO that the license agreement at issue in this case was limited to the territory of the United States. The court has previously determined that the Blaze Advisor license agreement unambiguously lacks a geographic restriction on the installation or physical location of Blaze Advisor.

Accordingly, this territory claim is not a valid legal basis on which FICO could terminate the license agreement.

Second, you have heard testimony regarding the definition of "client" in the license agreement. The court has determined that as a matter of law the client, "Chubb & Son, a division of Federal Insurance Company," means that the client is Federal Insurance Company.

Therefore, use of Blaze Advisor by Chubb Canada, Chubb Europe, and Chubb Australia before the license agreement was terminated was not a breach of the license agreement.

Every contract includes an implied covenant of good faith and fair dealing. This means that even though it is not specifically written in the contract, it is understood that each party must act in good faith and deal fairly with the other party in performing under the contract.

Under this covenant, the parties promise not to do anything that will injure the other party, including not doing anything that will prevent the other party's performance.

Federal has the burden of proof on this claim.

On FICO's claim for copyright infringement, FICO has the burden of proving by a preponderance of the evidence that.

1. FICO is the owner of a valid copyright. This element is established; and 2. Defendants used the copyrighted work without permission.

The party seeking damages must prove those damages were caused by the other party's wrongdoing. For example, in FICO's breach of contract claim, FICO must prove its damages were caused by Federal's breach.

In Federal's breach of contract claim, Federal must prove its damages were caused by FICO's breach.

A party asking for damages must prove the nature, extent, duration and consequences of the alleged harm.

Damages must be proved with reasonable certainty. You may not award damages that are speculative, that is, damages that might be possible, but are based solely on guess work.

The party seeking damages is not required to prove the exact amount of its damages, but must show sufficient facts and circumstances to permit you to make a reasonable estimate of the damages.

If you find any party is entitled to a verdict on more than one of its counts, you should take care to avoid awarding duplicative damages.

Hold on one second.

If you find that either FICO or Federal are owed damages for breach of contract or breach of the implied covenant of good faith and fair dealing, you should award that party damages in the amount that is required to make them whole.

Damages on a breach claim are intended to replace the loss caused by the breach and place the party in as good a position as it would have been in had the other party not breached the contract or the implied covenant.

If you find that plaintiff has proved that defendant has infringed plaintiff's copyright, then you must determine the amount of damages, if any, plaintiff is entitled to recover. If you find that plaintiff has failed

to prove the claim, then you will not consider the question of damages.

Plaintiff must prove damages by a preponderance of the evidence. Plaintiff may recover for any actual losses it suffered because of the infringement, plus any profits that defendant made from the infringement.

I will define these terms in the following instructions.

The measure of actual damages for FICO's breach of contract claim and its copyright infringement claim is the fair market value of a license to use Blaze Advisor. The fair market value is the license fee that a willing buyer and a willing seller would have negotiated for the allegedly improper or infringing use that was made.

The license fee is the amount that the licensor and the licensee would have agreed to in a hypothetical negotiation for a license covering the allegedly infringing use that was made.

In considering this hypothetical negotiation, you should focus on what the expectations of the licensor and the alleged infringer would have been had they entered into an agreement at that time and had they acted reasonably in their negotiations.

In determining this, you must assume that both parties were willing to enter into an agreement. The

license fee you determine must be a fee that would have resulted from the hypothetical negotiation, not simply a fee either party would have preferred.

Breach of contract and breach of the implied covenant of good faith and fair dealing claims allow for nominal damages.

If you find for FICO on their breach of contract claim against Federal or you find for Federal on their breach of contract or breach of the implied covenant of good faith and fair dealing claim against FICO, but you find that the prevailing party has failed to prove damages as defined in these instructions, you must award nominal damages. Nominal damages may not exceed $1.00.

That instruction just pertained to the breach of contract claims and the breach of implied covenant claims. Now I'm returning to the copyright infringement measure of damages.

In addition to recovering its actual damages, if you find defendants infringed FICO's copyright, FICO may recover the profits that defendant received because of the infringement. Defendants' profits are recoverable, however, only to the extent that you have not taken them into account in determining actual damages.

The following three instructions all relate to your calculations of profits of the infringer, of the

alleged infringer.

To meet its burden under the copyright act's disgorgement of profits provision, FICO's burden is to prove a causal nexus between the revenues defendants received and the unauthorized use of Blaze Advisor. This is referred to as attribution.

FICO must identify defendants' revenues that are attributable to the alleged infringement. A party cannot meet its burden to establish the causal nexus by identifying revenue that is only remotely and speculatively attributable to the infringement, that is, FICO must show that the use of Blaze Advisor contributed to the generation of the revenue.

In determining attribution, you should only consider revenue FICO has proven is directly connected to the alleged infringement. In other words, if defendants earned revenue through programs or products that did not involve use of Blaze Advisor, those revenues are not attributable to the infringement, and you should discount them in your calculation of profits of the alleged infringer.

If you find profits were earned by companies under the control of the defendants through their use of Blaze Advisor, you may award those damages if you find they are attributable to the infringement.

If FICO establishes attribution, as I have just

instructed you, the burden to allocate profits shifts to the defendants, that is, it is defendants' burden to prove those profits as distinct from revenues.

Defendants must prove those costs associated with infringing revenue that may be deducted to arrive at profits and must prove the portion, if any, of profits that arise from the infringement by identifying the contribution to the profits of elements other than the infringement.

Mathematical exactness is not required, but the apportionment must be reasonable and cannot be speculative.

The fact I have instructed you as to the proper measure of damages should not be considered as indicating my view as to which party is entitled to verdict in this case.

That concludes the instructions on the law. After the closing statements or arguments, rather, I will give you a final instruction on the process of deliberation.

With that, let's take a brief break. Stand up, stretch, whatever you need.

And, Ms. Godesky, you may prepare.

MR. HINDERAKER: Can we step out for a little bit?

THE COURT: Yes. We will start again at 20 minutes to 10:00 on that clock.

(Recess taken)

THE COURT: Counsel for Federal and ACE, you may proceed.

MS. GODESKY: Thank you.

Good morning, everyone. On March 30th, 2016, a couple of months after the ACE acquisition closed, and after a decade-long positive business relationship, FICO said that it was terminating Chubb's Blaze license agreement with the termination effective the very next day.

Here's Mr. Carretta's March 30th termination letter. "This letter serves as notice that the agreement is terminated effective on March 31st, 2016."

This forced Chubb into a completely awful position, because it's physically impossible to extract Blaze from your internal systems immediately.

You heard Mr. Ghislanzoni testify that it took Chubb months to do so after it started that process in 2019.

So with this termination notice from Mr. Carretta, Chubb was forced to either risk facing a lawsuit alleging that it violated the copyright laws, exactly what happened in this case, or pay FICO much more for a license than Blaze is actually worth. Basically pay or face allegations that you violated the copyright laws.

But Chubb had already paid $1.3 million for the Blaze license, and Chubb would not be bullied into paying money that it didn't owe to a business partner that had no right to terminate a perpetual, supposed to be never-ending license to use Blaze.

So why did FICO do this? We may never know for sure, but I want to talk a little bit about what we do know.

We know that ACE was the bigger company. ACE was buying Chubb, not the other way around. So maybe FICO assumed that ACE would be in charge and FICO knew that ACE was not a huge fan of Blaze. Maybe FICO was worried about that, and we saw some emails from Mike Sawyer and Russ Schreiber suggesting as much.

Here they are. Mr. Sawyer and Mr. Schreiber talking about the acquisition. "Holy cow," from Mr. Schreiber. "Wow. Not good," from Mr. Sawyer.

You heard both Mr. Sawyer and Mr. Schreiber testify about FICO's relationship with ACE. We would try to sell them, and they wouldn't take the phone call. Chubb was a significantly more significant client than ACE. Maybe FICO figured it had nothing to lose because in 2016 interest in Blaze was plummeting.

You heard from Mr. Sean Baseman, FICO's very first witness, about how his work on Blaze dropped from 80 percent of his time in 2016 to just 10 percent by 2021. You also heard Mr. Baseman admit that these days Blaze is better suited for small companies and companies in Turkey and South America.

Or maybe FICO just saw dollar signs. You heard FICO open this trial by describing the ACE acquisition as

the largest insurance company acquisition merger in history, something that created a company with $30 billion in revenue.

When you're talking about numbers that big, trying to shake down a business partner for an extra payment that you're not actually entitled to may seem like something that you can just get away with.

Ladies and gentlemen, putting Chubb between this rock and a hard place, this position where it either had to pay an additional license fee that it didn't owe or defend a lawsuit, is not only improper under the license agreement itself, but also a breach of the duty of good faith and fair dealing that you just heard about.

Now, before we go any further, I do want to thank you for your time and attention over the past few weeks. I told you in opening that we were going to try to be as efficient as possible with your time. And defendants really tried to keep that promise and today is no different.

I also told you that this case would require some hard work, and you were picked for this jury because we know that you're willing to do that work, and you committed to giving defendants an equal shake.

So let's dive in and do the hard work together, and I'm going to talk through each of these issues as efficiently as I can.

Now FICO says that Federal breached the license agreement's assignment provision and a provision in the contract that says only Federal's employees could use Blaze. FICO also says that it had valid reasons to terminate the Blaze license in March 2016 and that Federal and ACE committed copyright infringement by continuing to use Blaze after that date.

Defendants' claims and defenses are the exact opposite of that. We're asking you to find that FICO had absolutely no basis to terminate the license agreement in March 2016 because Federal did not breach the contract.

FICO made up termination reasons in bad faith, and it had no basis for its copyright infringement claims either.

So I'm going to walk you through what that means in terms of the verdict form you're going to be given at the end of the case. But for now I want to review FICO's made-up termination reasons, working off Mr. Carretta's letter.

Here's Mr. Carretta's March 2016 termination letter. And the first reason FICO gave for terminating the license agreement was this purported violation of Section 10.8, the idea that the deemed assignment from Federal to Chubb Limited after the acquisition was void and of no force and effect. That's what he said.

Now before I launch into all the evidence on this issue, I do want to remind you that as you just heard from Judge Schultz, FICO has the burden of proving breaches by Federal. That's why you're hearing from me first this morning, even though FICO is the plaintiff.

It has the burden of proof on each of these breach claims and as Judge Schultz said, FICO has to prove by a preponderance of the evidence that Federal breached. That's a burden that they did not meet.

Remember that Section 10.8 has two different sentences. And this case, everyone agrees, is about the second sentence of 10.8. Mr. Hinderaker told you the same thing in opening. These are his words on the screen. "This lawsuit has nothing to do with a formal assignment document where two partners sit down and put in writing that they're going to assign their rights."

Remember I gave you that example in opening of maybe me writing an assignment agreement with my sister for my apartment. That's not what happened here, and everyone agrees, so you can put the first sentence of Section 10.8 out of your minds.

That leaves us with the second sentence of 10.8, which you are all very familiar with by now. And the second sentence talks about what happens in the event of a deemed assignment. It says, If there is a deemed assignment from

Federal to Chubb Limited, then Chubb Limited and its affiliates could keep using Blaze after an acquisition so long as they didn't expand use of the software, the expanded use rule that everyone agreed on.

And that makes sense, right, because if Chubb paid for a license to use Blaze forever, why should a merger or acquisition or a reorganization, things that happen all the time in the business world, change anything if Chubb is not expanding its use of Blaze? It shouldn't, and that's exactly why there's an expanded use rule.

And the evidence showed, ladies and gentlemen, that FICO does not always agree to an expanded use rule. We looked at this example, an agreement that FICO entered with [redacted]

This is a license agreement that says no assignments are ever allowed without FICO's written consent. But this is not what the Chubb agreement said. The Chubb agreement has an expanded use rule, the second sentence.

Now the gist of FICO's breach argument, you heard it from Mr. Waid, is that the second sentence of Section 10.8 is this hard and fast rule. If there's a merger, if there's an acquisition, if there's a reorganization, consent from FICO was required before Chubb could continue using Blaze regardless of the use.

You can see Mr. Waid's testimony about this, about

the whole consent required theory up here on the slide. But this "consent is always required" argument does not line up with the evidence.

FICO is telling you now that the business purpose, the commercial purpose of this assignment provision was to make sure that FICO would always have an opportunity to renegotiate fees.

But all of FICO's witnesses, every single one of them, admitted that they never discussed this so-called business purpose with Chubb. Here's their testimony up on the screen. Ms. Boone, Mr. Carretta and Mr. Waid all said the exact same thing.

None of them ever communicated to Chubb this idea that license fees would always need to be renegotiated after an acquisition.

And this is important because you heard and -- you heard from Mr. Folz yesterday when he came to testify, and he explained that back in 2006 when vendors proposed license agreements tied to Chubb's revenue, Chubb's practice was to decline those types of deals.

FICO could have tried to negotiate language into the Blaze license agreement that expressly said FICO has certain rights if Federal's revenue is growing because of an acquisition, but there's no record that it did, and that kind of language does not appear in the agreement.

Now you saw that Mr. Schreiber and Mr. Sawyer talked about exactly that in the months after the acquisition.

And ladies and gentlemen, let me stop here and say that it is quite significant that you did not hear live testimony in this trial from Mr. Sawyer, Mr. Schreiber or Mr. Wachs. The evidence showed that those three gentlemen were responsible for FICO's relationship with Chubb, with Mr. Wachs even participating in negotiating the license deal.

You heard live testimony from a lot of FICO witnesses who were not involved in any specific communications with Chubb, people like Mr. Carretta, Mr. Baer, Mr. Waid, Mr. Baseman, but those weren't the witnesses whose names were all over the documents. That was Mr. Sawyer, Mr. Schreiber and Mr. Wachs.

Mr. Ghislanzoni traveled here from England to be at trial and make sure that you heard his side of the story. Former Chubb employee Mr. Folz traveled to Minnesota yesterday to look you in the eye and tell you what he intended when he negotiated that license agreement.

But Mr. Sawyer, Mr. Schreiber and Mr. Wachs, the three FICO employees at the center of this story, nowhere to be found for trial.

But you do have their emails. So even though you

couldn't meet them in person, you know what they were saying years ago. You knew that Mr. Schreiber was a little concerned about the unreasonably withheld bit in the Chubb license agreement. He was worried about the expanded use rule.

Mr. Sawyer wasn't as concerned. He said, I would think that tripling the size of gross written premium should be significant enough to get around that unreasonably withheld language.

But Mr. Schreiber, his boss, he knew to ask, well, is the license specifically tied to gross written premium, to revenue? I don't see anything on GWP in the agreements.

And we asked Mr. Schreiber about this exchange at his deposition. He explained that he asked Mr. Sawyer whether the Chubb agreement specifically referenced revenue, because, quote, "That would have been clearer." Exactly.

As Mr. Waid admitted when he testified, the word "revenue" does not appear in the Chubb license agreement. And that's significant, ladies and gentlemen, because FICO does enter agreements that specifically reference revenue levels after a merger or acquisition.

And you can see an agreement up on the screen right now. This is a Blaze agreement with [redacted] [redacted] which specifically talks about renegotiating license fees based on the post acquisition event revenue

footprint of a combined company.

I asked Mr. Waid if this was in the Chubb agreement. He said, "Absolutely not."

Here's the agreement that FICO had with a company called [redacted]. It talks about how if annual gross revenues increase after a merger or an acquisition by at [redacted], certain rules are going to kick in.

Ms. Boone agreed that she never tried to add this kind of language to the Chubb agreement.

Ladies and gentlemen, the other thing is, if Mr. Waid was correct about his hard stop, consent is always required theory, Mr. Schreiber and Mr. Sawyer would not have been trading emails back in 2015 about whether the Chubb agreement referenced revenue.

Mr. Schreiber would have sent an email that said something like, well, ACE announced it's acquiring Chubb, so as of the closing date, it's official, Mike, no more use of Blaze unless we consent. He didn't say that because there's no "consent is always required" rule in the Chubb contract.

Mr. Sawyer has acknowledged that.

Let's go to the next slide.

At the top of this slide, you see Mr. Carretta's letter to Chubb right after the merger. He wrote "FICO's consent is required under the applicable provision of the license agreement."

What did Mr. Sawyer say at his deposition about assertions by FICO that consent is always required? He said, "I would have communicated to Chubb that it is possible that consent will be required based on what we know about the planned merger."

Possible, not a hard and fast rule, ladies and gentlemen. And that what Mr. Sawyer said right here, that is defendants' position on how the expanded use rule works. Chubb might need consent from FICO if it's deciding to expand use.

So what's the significance of all of these problems with FICO's consent is always required theory? Well, they show that there was no breach by Federal.

In opening, I walked through the work of examining Section 10.8 and applying it to the facts of this case. And I want to do it again, and I'm going to use a deemed assignment, the idea that there was an assignment of Federal's rights to ACE as my example.

The first thing you need to do is substitute "Federal" for the first two times that client appears in this contract, because as Judge Schultz just instructed you, Federal was the client that bought the Blaze license.

Then you need to remove all the references to mergers and reorganizations and focus on acquisitions, because that's what happened here. And I did that on this

slide with the green dots, that simplification.

Next, you need to remember two undisputed facts that Judge Schultz read to you right when this case started. Fact 13. After the acquisition of the Chubb Corporation by ACE Limited, the Chubb Corporation ceased to exist; and fact 14, ACE Limited changed its name to Chubb Limited.

Based on those undisputed facts, you can fill in exactly what happened after the acquisition. Federal was acquired by ACE Limited, which then became Chubb Limited. And once you do that, once you fill in the words with what the evidence showed happened, what does the contract say?

It says that if Federal is acquired by ACE Limited, the acquisition shall be deemed an assignment subject to this section.

Now, Mr. Carretta, FICO's lawyer, he agrees with that. If we go to the next slide, you will see the top box is a quote from Mr. Carretta's first letter to Chubb after the ACE acquisition. He wrote, "A change of control or merger and acquisition of Chubb was also stated as being a deemed assignment requiring consent."

Now, of course, we disagree with Mr. Carretta that consent was required, but we're all on that same page that a deemed assignment is what happened here.

Now if we go back to Section 10.8 and we look at the second clause, the second sentence, the expanded use

rule, it says, "And ACE Limited, now Chubb Limited, shall make no expanded use of the FICO products as a result of any such acquisition unless and until FICO provides such written consent, which will not be unreasonably withheld."

So ladies and gentlemen, what did the evidence show about whether the use of Blaze expanded after the ACE acquisition?

What we know, what expanded use of a software program is, because Mr. Ghislanzoni told us. Expanding use means you're adding the software, in this case Blaze, to new computer applications.

Ladies and gentlemen, this is one place where you do not have to do the hard work. Mr. Ghislanzoni's explanation is undisputed. FICO has not given you an alternative definition for expanded use.

Mr. Waid was here every day at trial, so he certainly heard Mr. Ghislanzoni's testimony, but he didn't offer a different way to measure expanded use. And that's because the evidence shows that FICO has agreed in other circumstances to measure expanded use based on the number of computer applications using Blaze.

Here's that contract with [redacted]. Look what it says about a merger and acquisition. It says [redacted] would need [redacted]

[redacted]

FICO cannot prove that Chubb put Blaze in more applications after the acquisition. It has not even tried.

Now Mr. Ghislanzoni told you it was his job to integrate the Chubb and the ACE technology, and the direction that he received was do not expand use of Blaze. And Chubb was very careful and clear about this.

How do you know that? Well, you heard about this Evolution project in Australia. Of course, it would have been easier in 2016 to just copy the Evolution application from Canada over to Evolution Australia, but that's not what Chubb did.

You heard Mr. Ghislanzoni tell you that he personally, he got involved and instructed the team in Australia, do not add Blaze.

Now FICO has tried to call this into question with those ChEAR spreadsheets. And I have a feeling you may be hearing more about them soon, but the person who created the ChEAR spreadsheets, Mr. Pandey, explained that a ChEAR spreadsheet simply tracks all of the technology that's ever been under consideration at Chubb. It does not show what technology is actually in use.

The evidence is that Chubb Australia used the IBM ODM software instead of Blaze in Evolution.

Now I really want to drill down on this question

of whether Chubb expanded use, because one of defendants' claims in this case is that FICO acted in bad faith when it rushed to terminate this contract in March 2016, even though it had no evidence that use of Blaze at Chubb was expanding.

Remember. The parties agreed in Section 10.8 that FICO would not unreasonably withhold concept to even expanded use of Blaze. And this language was very important. It was specifically requested and negotiated by Chubb. You saw that in the red lines of the agreements and the markup from Mr. Black at Chubb.

He added this language. And FICO's conduct after the ACE acquisition flew in the face of this agreement. You saw the first letter that Chubb sent FICO on February 17th, after the acquisition, telling FICO nothing was changing about its use of Blaze.

Mr. Waid told you when he testified that he found this letter reassuring. So no problems as of February 17th.

And then Chubb reiterated its commitment not to expand use of Blaze in a second message that it sent a few days later on February 25th.

You heard FICO claim that they had no information as to what Chubb was planning after the acquisition. But here's the information. Chubb told FICO that there would be no change in how Blaze was used and how many applications included Blaze. Chubb even proposed downgrading use. It

said, we'll go from our unlimited license to agree to only use Blaze in 15 computer applications.

Chubb also offered to lock down the number of Blaze users at 100, going from unlimited seats that they paid for to 100.

But FICO did not like this proposal, as reasonable as it was, because it wouldn't get FICO more license fees.

So Mr. Waid pointed to this sentence of Ms. Pawloski's proposal and declared it a deal breaker. He said it was a non-starter. This meant Chubb was operating in bad faith.

So what was so offensive about this sentence? Well, Ms. Pawloski's proposal suggested that Chubb could later change the applications using Blaze as long as it limited it to 15.

You heard Mr. Schreiber on video trying to characterize this as a FICO, the sucker, proposal. An agreement to downgrade from an unlimited license that gave you unlimited applications and unlimited seats to 15 applications and just 100 seats is not a proposal that justifies terminating a license that was supposed to last forever.

You heard FICO try to justify its rush to termination by saying, well, we were concerned that FICO might try to trick FICO -- that Chubb might try to trick

FICO about how many applications really had Blaze. But I think you know better than that by now, because you know if anything Chubb has been overcounting the number of applications.

Remember you heard about all those components of the CIS CSI Express application, DecisionPoint, Profitability Indicator. Chubb counted those separately, both in this report and at trial.

Ladies and gentlemen, Mr. Carretta admitted that he never even saw this proposal from Ms. Pawloski before he sent his letter terminating the agreement. That is truly incredible. That is bad faith.

And it gets even worse, because when Mr. Carretta and Mr. Waid testified, neither of them identified any evidence of expanded use of Blaze at Chubb in the period before that termination letter went out. Zero. Zilch. Nothing.

They both admitted that they couldn't identify anything. You can see it in their testimony on the screen. And Mr. Sawyer admitted the same thing at deposition.

"And my question was, are you aware of any evidence that there actually was expanded use following the merger?

"No."

FICO's witnesses had to admit that there was no

evidence of expanded use because there was just no way to get around that fact. If there had been, each and every one of their witnesses would have been here telling you about it.

Now, I expect that FICO will spend a lot of time talking to you about an argument crafted by its lawyers after the lawsuit started and years after FICO terminated this license agreement. They reviewed all of Chubb's books and records and searched for something that they could call expanded use.

FICO is going to talk to you about how the number of insurance writing companies in the applications that use Blaze expanded.

The first thing I want you to remember about these writing companies is they do not matter to FICO's claim that it properly terminated the license agreement or to its copyright claim. To prove that FICO properly terminated the license agreement and that it's entitled to copyright damages, FICO has to show that it properly terminated the contract on March 30th, 2016.

And even FICO hasn't argued that there was some kind of expansion in writing companies before that day.

They couldn't because the information that FICO relies on for its writing company theory, defendants' response to interrogatory number 17, shows that FICO only

asked for information about Chubb's computer applications starting after March 30th, 2016.

But even more important, this whole writing company theory is made up. It's not what expanded use means under the license agreement. Think about it. No one at FICO who actually negotiated the agreement or was involved in the business negotiations with Chubb talked about writing companies when they testified.

You only heard about writing companies from FICO's trial lawyer and Mr. Neil Zoltowski, the expert that FICO hired for this case. They showed you over and over Chubb's response to interrogatory number 17.

But this interrogatory response tells you nothing more than the simple fact that after FICO terminated the agreement, some policies by ACE writing companies, running through one single application, CUW-Inventory Management, were from Legacy ACE writing companies. That's it.

And I want to be clear about what this does not tell you. It does not tell you that Chubb infringed FICO's copyright. It does not tell you that ACE employees came in and all started using these applications. And you heard quite the opposite.

Mr. Ghislanzoni told you that ACE had no interest in expanding its use of Blaze. That means it wasn't trying to put Blaze in ACE applications. Even Mr. Carretta had to

admit there was no evidence that Blaze expanded into ACE applications.

And both Mr. Ghislanzoni and Mr. Pandey, the architects responsible for running these applications, told you they have no reason to believe that ACE underwriters were ever granted access to the CUW-Inventory Management application.

And after years and years of litigation, FICO hasn't found anything suggesting otherwise.

Now, they've talked a lot about this document that shows that at one point in time, shortly after the acquisition, some folks at Chubb considered whether they should give ACE underwriting assistants access to CUW. That's it.

So this whole argument about writing companies expanding, transactions expanding that comes from the interrogatory answer, is just an attempt to confuse the evidence. It's something that lawyers came up with years after FICO terminated the license agreement because they had to justify that March 2016 termination.

But it has no bearing on whether use of Blaze actually expanded, and the evidence made clear that when you're actually looking at Section 10.8, the expanded use rule applies and Chubb did not expand its use of Blaze.

Now I want to turn to FICO's copyright

infringement claim. This claim is connected to these issues we're discussing, so I want to cover it now before we go back to Mr. Carretta's letter.

Now you know that there's no copyright infringement by Federal because FICO's termination was completely improper. And as long as FICO -- Federal had a license to use Blaze, it couldn't be liable for infringement. So I want to focus here on this idea of an infringement by ACE American.

Ladies and gentlemen, the whole point of Section 10.8 was to ensure that ACE American would have a valid license to use Blaze in circumstances like the ACE acquisition. Remember the work that we did applying Section 10.8 to this case.

This says that if there was a deemed assignment from Federal to the new entity, ACE Limited, which then changed its name to Chubb Limited, you have the expanded use rule.

And then remember Amendment Two to the Blaze license agreement extended rights under the contract to client and its affiliates. It gave the client, now Chubb Limited, and it's affiliates, like ACE American, the right to use Blaze.

And here's what that means in practice. As soon as the acquisition closed, the new parent organization was

ACE Limited. And ACE American became part of the Chubb group.

FICO may talk about another ACE entity, ACE INA Holdings, but as far as this corporate transaction and what it means under Section 10.8 are concerned, they are all the same.

Now you heard that ACE Limited quickly changed its name to Chubb Limited, because of brand recognition. And this is what the new organization looked like.

Chubb Limited acquired the right to use Blaze after that deemed assignment. And because ACE American was an affiliate of Chubb Limited, ACE American could use Blaze too.

Now, you heard FICO's lawyers ask every Chubb witness who went up there on the stand detailed questions about who their employer was, what name was on their paycheck. FICO's theory is that because Federal employees became employees of ACE American in January 2017, there was Blaze copyright infringement as of that date.

But, ladies and gentlemen, the whole point of this deemed assignment was to make sure that FICO could not accuse Chubb of copyright infringement just because of technical corporate name changes. And that makes sense.

What wouldn't make sense is if a company could be on the hook for copyright infringement just because one day

Pamela Lopata is working for Federal and then the next day her employer is ACE American.

FICO has not met its burden to show copyright infringement.

Now I want to return to Mr. Carretta's letter. The next thing that he said in his letter was that he's going to terminate the contract because FICO had become aware of a further material breach due to use of the software outside the United States in two applications in the United Kingdom and Europe. And then he references becoming aware of another application in Canada.

And by the way, look at how Mr. Carretta is talking about use of Blaze in this letter. He's talking about the applications that use Blaze. He's not counting names of writing companies.

Now when Mr. Carretta testified, he confirmed that he was not involved in the original negotiations for the license agreement and he had no idea what was discussed about use of Blaze in Europe. He also admitted that he didn't do anything to investigate what his colleagues at FICO had been telling Chubb about whether Blaze could be used in Europe before sending that termination letter.

You can see from the testimony that he fought me a bit on those questions because he didn't like my reference to representations by FICO, but he did finally admit he

didn't look into any conversations between Chubb and FICO about use in Europe.

The evidence is overwhelming that back in 2006 FICO and Chubb negotiated a global license. You know that now.

Mr. Carretta's failure to investigate that in good faith before he sent this letter is another reason why defendants have a counterclaim against FICO.

I want to take a look at what Mr. Carretta would have learned if he had investigated, even just a little, whether Chubb's Blaze license was global, or maybe the issue was that Mr. Carretta didn't want to investigate because he knew what he would find.

Now, I told you in opening to look out for instances where FICO is telling you one thing now that's different from what it said back then. You saw this over and over in the course of trial.

FICO tried to take the position, you just saw it in the letter, that the Blaze license only covered the United States. But before the ACE acquisition, when FICO thought no one was watching, Mr. Wachs, the FICO executive who negotiated this agreement, admitted he negotiated a global deal.

You also heard live testimony from Mr. Folz, who negotiated with Mr. Wachs. He told you it was completely

ridiculous for FICO to claim that the scope of the license didn't include Federal's global affiliates.

And the evidence showed that's exactly what Mr. Carretta would have realized if he had undertaken any sort of investigation into FICO's communications about the scope of the agreement. Time after time after time after time in this trial, you saw that FICO's executives acknowledged that the Chubb license was global.

Remember this email. This was Mr. Haines at FICO proposing a $2.9 million license fee for Blaze saying that's the price to grant Chubb global rights. And Mr. Waid chimed in with a recommendation of 1.6 with a $20 million discount.

When I confronted Mr. Waid with these emails, first he kept asking me, well, what ELA are you talking about, and then when he realized that there's no way to align his emails from 2006 with FICO's position in that termination letter from Mr. Carretta, the termination letter that Mr. Waid told you he authorized, he retreated to saying he just doesn't remember anything. I don't recall any of those emails.

Look at FICO's own internal tracker. Chubb global ELA. Moving towards a global ELA. That's weeks before the agreement was signed.

Next is Mr. Wachs's message to Mr. Schreiber in November 2008, two years after the agreement was signed.

Mr. Folz referenced this email yesterday when he was testifying when Mr. Hinderaker asked him, "Well, do you have any evidence that FICO knew it was a global license?

"We were negotiating for a global ELA? Correct.

"You state that in reviewing your notes and some archived emails it's apparent to me that the corporate ELA that was negotiated with Phil Folz and June Drewry intended to include the global license, correct?

"That is what I stated.

"You believe that it was intended to include --

"That's what I said.

"The ELA was intended to clue the global license?

"That is what I said."

On the next slide is a document that FICO prepared for Chubb in 2011, reporting that FICO faced challenges at Chubb in the UK. FICO was helping Chubb Europe use Blaze before Mr. Carretta decided to try to terminate the license agreement because Chubb was using Blaze in Europe.

Let's go forward in time.

This time we have a confirmation of a global license from Mr. Sawyer. They do have a global ELA for Blaze, and they have an application running in the UK.

Now remember, Mr. Carretta admitted that before he sent his termination letter, he didn't check with Mr. Sawyer to see what Mr. Sawyer knew about Chubb's global rights.

Mr. Hill, another FICO employee, sends an email. To set expectations, they already have a Blaze global ELA.

Another email, someone at Chubb Europe, a Mr. Ewen Setti, reaching out to FICO to Mr. Oliver Clark. We're using a global Blaze Advisor license.

No one at FICO responded to this message in 2013 and said, hold on, Chubb Europe, you don't have a license to use Blaze, this is a material breach of the contract, and we're terminating your rights.

That's because, as you saw Mr. Clark admit on video on Monday, all the information he had at the time confirmed Chubb Europe had a right to use Blaze.

"At the time that you were assisting Chubb Europe with its use of Blaze, you and others at FICO Europe checked to see whether that use was within the scope of the license, correct?

"Yes, information was received saying that this was a global license that the client had from FICO.

"First from FICO, correct?

"Yes."

That's the information that Mr. Clark received when he asked about Chubb's rights under the agreement. But Mr. Carretta didn't ask, or maybe he didn't want to ask.

Here's Mr. Schreiber again. He acknowledged about a year before the ACE acquisition, before he saw the dollar

signs, that Chubb's license was global.

Now we have Mr. Moffat from FICO emailing Chubb London with a price quote. No additional Blaze license is needed as it is covered within the overall global ELA.

Mr. Carretta's letter also mentioned some late breaking news of Chubb use in Canada, but you know from the evidence you've seen at trial that again this was not improper. Mr. Folz negotiated a global license, and FICO reported on that over and over.

This is an email that went to Mr. Waid in 2015 when folks at FICO were canvassing Canadian insurance companies trying to drum up business.

Mike Sawyer indicates that they, Chubb Canada, has enterprise licenses for Blaze worldwide.

Ladies and gentlemen, the evidence is overwhelming. Executives in every corner of FICO, including the people responsible for FICO's relationship with Chubb, Mr. Sawyer and Mr. Schreiber and Mr. Wachs, acknowledged over and over that Chubb had a global license. But in FICO's bad faith rush to terminate and try to extract those extra license fees, Mr. Carretta and Mr. Waid were not concerned with these facts.

Let's look now at Mr. Carretta's third and final reason for terminating the license agreement. That's this idea that there was disclosure of confidential information

to a third-party consultant.

Now FICO told you, and I'm sure you'll hear again in closing, that Federal has admitted in the course of this litigation that consulting firms called DWS and AppCentrica used Blaze in connection with supporting work at Chubb Canada and Chubb Australia.

And the argument from FICO is that help from consultants breached the contract.

But very importantly, Judge Schultz just instructed you that damages are an element of a breach of contract claim. That means that AppCentrica and DWS's access to Blaze only counts as a breach under the law if FICO can show that their use actually caused FICO damages.

Now you've heard that there's no categorical ban at FICO about using consultants to help develop computer applications. And there's no evidence that these two consultants actually caused damage to FICO. There has been a complete failure of proof.

What did you hear about DWS? Well, you heard that two people at DWS in Australia reached out to FICO to ask questions about Blaze. That's it. DWS wasn't lurking in the shadows. They emailed and called FICO, with one gentleman identifying himself as someone who worked at DWS and downloading a trial license from FICO's website.

Now I didn't even need to call Mr. Russ Hodey from

Chubb Australia to testify and tell you how FICO could not have been damaged by this. It was clear from FICO's evidence that no damages were caused and we didn't want to waist your time. We wanted to return you to your lives.

So remember what Mr. Carretta said. Mr. Carretta didn't have any information about these consultants, other than the fact that when he asked people to comb through maintenance logs and see if they could find anything else to raise with Chubb, he saw a reference to DWS.

Mr. Carretta also did nothing to investigate how many people at AppCentrica or DWS used Blaze.

Any question about whether FICO could have possibly been harmed by this was answered by this email that Mr. Sawyer sent around the time FICO found out about DWS. And this was before the lawsuit. Here's what he said. "Please continue to be responsive to DWS."

And you saw Mr. Waid was on this email chain, and when I asked him about it last week he said, "I was fine that they would continue to be responsive."

Now I have a feeling that FICO's going to get up and talk about how critical, how important it is that FICO have complete control over who is using Blaze and how it was damaged in some way by this access.

But if that were true, if FICO really believed it was being damaged, Mr. Sawyer and Mr. Waid wouldn't have

told their teams, continue responding to DWS. They would have done everything they could to stop it.

So here, too, FICO's actions before the lawsuit tell you a lot more about their claims than what you are hearing at trial. FICO knew about these consultants. Mr. Waid told you so, and you saw the emails. FICO consented to the use by the consultants.

Mr. Sawyer told his team to keep working with them. And FICO was not concerned about the consultants. Mr. Carretta told you he did nothing to investigate when he learned about it.

That evidence shows that use by the consultants did not cause FICO harm, and it certainly wasn't material. That means FICO has not met its burden of proving breach.

Now we're at the point where I have to start talking about all of the money that FICO is asking for in this case. Remember, if there's no breach of contract and no copyright infringement, FICO is not entitled to any damages.

You don't even have to talk about damages. You can skip over those questions in your verdict form, and I believe that you will based on all the evidence we just talked about.

But FICO is going to spend some time talking about all of the money it's hoping you will award, so I need to

address it. And I'm going to start with this concept of actual damages or lost license fees.

The idea here is that if FICO proves that Federal breached the contract or wins this copyright infringement claim, FICO would be entitled to a license fee that would cover any improper use of Blaze.

As Judge Schultz instructed you this morning, that means we're talking about a license that would cover the use of Blaze at Chubb beginning in 2016 through 2020 when Blaze was removed.

So how are you supposed to figure that out? Well, Judge Schultz told you that you would determine this license fee based on what a willing buyer and seller would have negotiated.

He told you that you have to assume they were acting reasonably.

Let's go to the next slide.

Once more, FICO's position now does not match its position before the litigation.

Now, I'm not sure exactly what Mr. Hinderaker is going to say when he gets up here, but I think FICO's litigation price will involve tens of millions of dollars. But before this lawsuit, FICO willingly negotiated an enterprise-wide perpetual license with Chubb, willing buyer, willing seller, for $1.3 million. But now that FICO is in

the middle of the lawsuit, they've doubled down.

When Mr. Waid talked about standard FICO pricing, he did some really creative math that involved charging on a per application basis, charging based on the number of years Blaze was in use and even charging per country fees.

No one at FICO is pricing licenses, by the way, based on the number of writing companies using Blaze. You saw that they use application-based pricing.

Now you know by now, ladies and gentlemen, that there is nothing standard about paying tens of millions of dollars for Blaze. Mr. Waid focused his math on application-based pricing, but you also heard about enterprise-wide pricing.

When a customer buys a license that covers the whole enterprise, they can put in as many applications as they want. That's the type of license that Chubb bought in 2006, and it's the type of license a lot of customers buy.

If an enterprise-wide license is available, what buyer would ever be willing to buy Blaze individually for 10 to 20 different applications? Not one. And FICO couldn't show you a single example in this trial.

That's because Mr. Baseman and Mr. Waid told you FICO has a rule of thumb. If a customer uses Blaze in more than two to three applications, they'll typically offer them an enterprise-wide license. And that makes perfect sense.

If you have a family of five, you buy a family plan for Verizon. You don't each get your individual plans because it costs more.

Mr. Waid also focused his math on application-based pricing that charged by each individual year of use, but you also heard about perpetual license. That's the type of license that Chubb bought, the type of license that many of FICO's customers bought, because, again, no willing Blaze buyer is ever going to agree to pay more for a license to use Blaze year by year than it could pay for a license that lasts forever.

Here are FICO's standard pricing guidelines for enterprise-wide perpetual Blaze license. Mr. Waid admitted when he testified that [redacted] would be the starting point, the pre-discount starting point, for a [redacted].

Ladies and gentlemen, a [redacted] is huge. That is [redacted] than Chubb before the ACE acquisition, and it's [redacted] than the combined ACE/Chubb entity.

So remember if you're considering awarding FICO a lost license fee in this case, and we do not think there's any basis to do so, the idea is that you would figure out a perpetual enterprise license that would cover the combined ACE/Chubb entity as of 2016. That's because the Chubb side

of the house had already paid for a perpetual enterprise-wide license.

So what does that math look like under FICO's standard pricing guidelines? I did the math on the slide. It comes out to about [redacted]. This math is based on the fact that ACE had [redacted] in revenue as of 2016, and it assumes the [redacted] discount that's listed in the standard pricing guide for licenses over [redacted].

But you don't need to take me at my word with my math. You can do the math yourself working off the FICO pricing guide, or you can see what Mike Sawyer did when he was asked to apply FICO's standard pricing model to ACE in 2016.

"As I recall, I was asked to apply the standard pricing model that they put out to the field representatives by plugging in the scope of use, which would then -- the enterprise-wide license agreement, and based on the new assumed gross written premium, and that would spit out the price.

So what number did Mr. Sawyer come up with? Well, we know he said this to Mr. Schreiber in February of 2016. "They, meaning Chubb, probably don't have a sense that we're going to be asking for three plus million."

Ladies and gentlemen, FICO seems to have forgotten all about what standard pricing actually means when it

walked through the courtroom doors. Back in 2006 they understood. This was a discussion about the right price for an enterprise-wide perpetual license for the Chubb Group of Insurance Companies which reported $12 billion in revenue that year.

Mr. Waid recommended FICO suggest 1.6 million with a 20 percent discount. And Mr. Laden, Mr. Waid's boss, responded you are correct, let's not get greedy.

And this is all consistent with what you heard from Mr. Folz yesterday. Mr. Folz spent 30 years negotiating license agreements for Chubb. He told you that when he set out to negotiate a never-ending license for Blaze, $2 million was his high-end number.

He told you that numbers like 30, 40, $50 million, the kind of numbers Mr. Waid walked us through, were completely ridiculous. No willing buyer has ever paid close to even $5 million to access Blaze.

Mr. Waid has access to every agreement FICO has ever entered, but when I asked him if he brought to trial a single license for Blaze that showed a customer paying 50 million, 40 million, 30 million, 20 million, he couldn't show me one.

If FICO had an agreement that showed anything close to the numbers they've been throwing out in this trial, they would have brought it to show you. Of course,

they would have. They didn't bring one because it doesn't exist.

There are 14 Blaze licenses in evidence in this case, and they are all listed on this chart. We could have put more into evidence, but we didn't want to waist your time. The point is made.

Here is what customers actually pay for Blaze, even the biggest companies in the world, [redacted], [redacted], [redacted]. None of them has paid anywhere near the tens of millions of dollars you have heard from Mr. Waid. The highest license fee amount in evidence is an approximately [redacted]

You heard Mr. Waid characterize it as a [redacted], but that was including maintenance.

All these prices, ladies and gentlemen, make a lot of sense when you consider what Mr. Ghislanzoni told you. Whether Mr. -- when Chubb removed Blaze and switched to Drools, Chubb spent about $1.5 million. That's in the range of the 1 to $2 million you saw in the graph a minute ago and nowhere near FICO's litigation pricing.

Why would any willing buyer of pay tens of millions of dollars for Blaze when they could get a comparable product on the market for about two percent of that? No willing buyer would, and that's what matters, because as Judge Schultz told you, any lost license fee

cannot be based solely on what FICO would have preferred. It has to also reflect what a willing buyer would actually pay.

Okay. Let's talk about disgorgement damages. These are the damages that can only be awarded if there's copyright infringement. And for all the reasons we talked about, there is no copyright infringement and no disgorgement damages.

But again I think FICO will talk to you about that $21 billion in revenue earned by Chubb and the idea of all this value associated with Blaze, so I need to address this argument too.

During this trial, FICO showed you over and over again interrogatory responses 16 and 17, because that's where Chubb identified $21 billion in revenue associated with insurance policies running through the computer applications that included Blaze.

The reason FICO did that, the reason FICO kept showing you those numbers, is because it's hoping that you will award FICO billions of dollars in copyright damages or some other really huge number.

And before I talk to you about why there's absolutely no basis to do that, I want to level set.

FICO sold Federal a global, never-ending license to use Blaze for just over a million dollars. And I just

showed you that's pretty much what everyone else pays to use Blaze as well.

Every FICO witness, and Mr. Hinderaker during his opening has told you, that FICO uses value-based pricing. That means they try to make it so the license fee a customer pays roughly matches FICO's estimate of its value. So FICO took into account the value or the revenue that FICO expected Blaze to bring to Chubb when it came up with that $1.3 million fee.

And as we just talked about, the highest license fee in evidence is just over 2 million.

When I asked why Mr. Waid was okay with those numbers, why he wasn't jumping in on those emails from 2006 to say wait, hold on, Blaze can bring tens of millions of dollars or billions of dollars in value to a company, he said, "Why would I?"

And that's exactly right. This whole idea that Blaze could somehow be connected to billions of dollars in revenues is just something that FICO came up with for this lawsuit.

So against that backdrop I want to talk to ou about the first thing you would have to do if you're considering awarding disgorgement damages.

Judge Schultz instructed you that FICO has the burden of proving a causal nexus between defendants'

revenues and the use of Blaze.

Now, you heard a lot from FICO about the value of technology generally. FICO has shown you over and over this quote from a Chubb annual report that refers to technology as a competitive weapon. They highlighted it in opening. They showed it to several witnesses.

FICO's lawyers wanted everyone to admit that technology can be useful. That's their big aha. But members of the jury, that's obviously true. No one disputes that technology is used by every company or that it can be valuable. Mr. McCarter, defendants' software expert, he admitted that right away.

Mr. McCarter told you technology runs through all of these pillars. But this trial isn't about technology. This trial is about Blaze, and Blaze is not everywhere. It was in 13 computer applications at Chubb. And there's a big difference between agreeing with the general statement that technology has value and the notion that Blaze had a connection to Chubb's revenues.

You heard Mr. Pandey, he explained this reference in Chubb's annual report didn't have anything to do with Blaze. The business referenced on this slide was that Duck Creek administration system.

After weeks of testimony, no one connected Blaze to Chubb's revenue. FICO did not meet its burden. These

are FICO's witnesses. They picked them. You should assume that they picked witnesses who had knowledge about the things they were asked about.

Mr. Baer told you he has no idea of what rules Chubb used.

Mr. Ivey didn't know how Blaze was implemented at Chubb.

Mr. Baseman was only vaguely familiar with Chubb's use.

And Mr. Marce was not familiar with specifics either.

No one, not a single person at FICO, took the stand to tell you that Blaze generated revenue for Chubb. In fact, Mr. Baseman, the employee who FICO picked to come here and talk first about all of the virtues of Blaze, said he could not try to quantify the value.

Instead what you saw over and over was the response to interrogatory number 17. And then FICO had its damages expert, Mr. Neil Zoltowski, add up all the numbers in the interrogatory. That's what he did. He added up the numbers, and that's how you get to 21 billion. That's it.

But when Mr. Zoltowski was here last week, he very clearly testified that he totaled up the numbers in the interrogatories, but he didn't do the analysis that you've heard is required under the law to connect the use of Blaze

to revenue.

He did not do the analysis that would be required to offer opinions on whether there's that causal nexus between that $21 billion and Blaze. You saw when he came back in rebuttal, he didn't want to admit that was true, but it was.

When Mr. Zoltowski issued his opinions in this case, he thought Mr. Whitener was going to cover the causal nexus. You heard him talk yesterday about how that's usually covered by the industry experts. And in this case that would be an expert like Mr. Whitener who has worked in the insurance industry.

But then FICO had a lot of problems when Mr. Whitener testified. After talking for about four hours about all the value Blaze supposedly brought to Chubb, Mr. Whitener admitted in the first ten minutes of his cross-examination that he knew nothing about Blaze or any decision management software when he sat down to write his opinions.

FICO taught Mr. Whitener everything he knew about Blaze in a 90-minute demonstration that used a college admission scenario. And it's very hard to believe, but FICO waited to give that demonstration until after Mr. Whitener had already written all of his opinions.

Remember, Mr. Whitener got on the stand, and he

put up this slide, and he said, oh, yes, there's all these reasons why you'd use Blaze, increasing speed and agility and precision, hours and hours of testimony.

But then what happened on cross-examination? Mr. Whitener admitted that he didn't measure whether Blaze actually did any of those things. I do not know if Blaze increased speed of response. When I asked him you did not try to quantify in this case whether Blaze actually improved Chubb's ease of doing business, he agreed.

And then he even went on, allow me to point out I measured none of those things.

He didn't measure the ease of use for brokers and agents. He didn't measure whether Blaze actually improved ability to define accurate pricing. And he can't speak at all to whether Chubb actually increased the precision of its quotes to customers.

Here is the most important thing about Mr. Whitener's testimony. When I asked Mr. Whitener whether he could satisfy that causal nexus, whether he could say that Blaze actually contributed to any increase in revenue or profit at Chubb, he said he could not.

"Question: You do not know whether Blaze actually contributed to any increase in revenue or profit at Chubb, correct?

"Answer: I did -- correct. I did not measure

anything."

That is it right there. If any part of you was thinking about awarding copyright infringement damages, and I really hope you are not, this should be the end of the consideration.

Remember, the judge told you it's FICO's burden to prove that the use of Blaze contributed to the generation of revenue. No one at FICO could do it. Mr. Zoltowski told you he was counting on Mr. Whitener. And Mr. Whitener admitted he can't say that at all.

Now, I could stop there, but FICO is talking about billions and billions of dollars. So I need to make sure there is not a doubt in your mind that FICO has not met its burden.

We also showed you what happened when Chubb removed Blaze from those 13 computer applications. Chubb's CFO walked through all these graphs. If there was a connection between Blaze and revenue, you'd see a drop in revenue when Blaze is removed. But FICO completely failed to show any connection.

You heard exactly that last Friday from our damages expert, Mr. Chris Bakewell. He started his career in computer programming, and he has extensive financial analysis experience.

When FICO cross-examined Mr. Bakewell, they wanted

to spend all their time talking about that $21 billion number in response to interrogatory number 17. Mr. Bakewell explained why that number is inflated, and I'm going to get to that in a minute, but I want to focus on Mr. Bakewell's larger point.

Remember what he told you. All that math working off this $21 billion is wrong. It's wrong because there is no nexus between Blaze and Chubb's revenues in the first place.

Mr. Bakewell told you in no uncertain terms that when he examined the record, he found that FICO established no economic nexus between the use of Blaze and Chubb's revenues.

We agree. And you should stop there, because FICO hasn't met its burden. But if you somehow found that FICO met its burden, the next question is how much of Chubb's actual profits is attributable to Chubb. And as the judge explained, that burden is on us, if you get there.

We have to prove what costs should be deducted from any revenues attributable to Blaze and whether profits were earned by things other than Blaze. And that's where we got into all these things that make Chubb Chubb.

Mr. Bakewell explained how to do this calculation. He explained that you need to convert gross written premium to net written premium, and you apply the combined ratio,

and you get to a much smaller number. But all of this math, of course, Mr. Bakewell walked you through and explained to you don't get to this math because they haven't shown a causal nexus.

But we did show you all other factors that generated profit at Chubb other than Blaze.

Let's go to Chubb's software expert, Mr. William McCarter. He's worked in the insurance software and business solutions for the last 26 years. He told you about all the different decision management software he worked with.

At one point in trial, Mr. Hinderaker made a comment about how he thinks it's up to the jury to decide who is an expert. Well, I do not think there can be a serious dispute as to Mr. McCarter's qualifications as compared to Mr. Whitener.

And as Mr. Whitener explained, he knows decision management software inside out, and he concluded that Blaze did not contribute to the revenue or profits at Chubb.

He testified that many different factors, brands, strategy, reputation, paying claim, those are what contribute to revenue, not Blaze.

That brings us back to the pillars. You heard how important reputation is in the business of selling insurance. Mr. Harkin explained that's why ACE took Chubb's

name after the acquisition. You heard about agents and brokers and how important it is to have good relationships to generate business.

Human relationships do not have anything to do with Blaze. Mr. Schraer explained that to you. How else do you know Blaze was not driving profits? Well, we showed that Blaze had a really low rate of adoption.

Remember, Chubb had the right to put Blaze in as many computer applications as it wanted. If Blaze was a profit-generating tool, you would have expected to see it in every computer application, but that's not what happened at all.

You know that all 1500 of Chubb's computer applications use rules. Mr. Pandey explained that to you. But only 13 of those applications ever used Blaze. That's less than a one percent rate of adoption. At ACE it was even lower. Only four applications ever used rules decision management software at all.

Why am I talking about ACE? Well, ACE is another very large, successful insurance company. But as Mr. Ghislanzoni explained, they didn't see any benefit to using decision management software. They relied on software engineers to use programming language to write their rules.

Even where Blaze was used, we showed that it's only one of many components. Mr. Zoltowski didn't consider

that at all in throwing out his $21 billion number.

Mr. Pandey walked through the blueprint of this application. He explained that there are 20 plus different components. And he told you that Blaze is nowhere near the brain nor the central nervous system of any computer application at Chubb.

There is still more evidence that Blaze didn't driver Chubb profits. Remember, FICO's witnesses kept talking over and over about how Blaze can be used by business people. You don't need IT. But Mr. Pandey and Mr. Ghislanzoni told you that they tried that at Chubb and ACE, but it didn't work. And IT professionals had to jump it in to help.

Testimony by Mr. Theberge was consistent with that. She's a business user at Chubb, and she confirmed she never wrote rules into Blaze.

We showed that Blaze came with costs and challenges. You heard from Mr. Ghislanzoni about how sometimes it can create latencies in the IT systems, delays. Blaze required having software engineers who were trained in Blaze. But finding people who can use Blaze can be difficult.

You heard Mr. Schraer and Ms. Theberge explain on Monday that even when Blaze was up and running it wasn't always a success. They told you DecisionPoint, it had a low

adoption rate. It was a challenge.

We also showed that where Blaze was being used to run rules, in that, as a single component, Blaze wasn't deciding the rules. This was not controversial.

FICO's own witnesses admitted, using Blaze is like starting with a blank piece of paper. It's the Chubb employees who decide all the rules and exercise the judgment, people like Ellen Garnes, who you met last week.

So not only was Blaze a single component of these complicated computer applications running rules that Chubb employees came up with, we showed that Blaze is one of many different software products that can do the same thing. ODM, Red Hat, Drools, Pega. You heard about all of them.

Or software engineers can write rules into the applications themselves. That's the professional coding that Mr. Ghislanzoni described. And Mr. Pandey explained, 99 percent of the time that's what Chubb chose to do.

Ladies and gentlemen, if there's a doubt in your mind, even after we showed you, that Blaze is a single component of complicated computer applications, running rules that Chubb employees came up with and that Blaze could be replaced by another software product or programming language, consider the evidence of what happened when Blaze was removed.

No one complained to Mr. Pandey. No one

complained to Mr. Ghislanzoni. Ms. Garnes told you she noticed no changes in terms of her experience at Chubb. And the business users, people like Mr. Schraer and Ms. Theberge, also saw absolutely no impact.

Think about what Mr. Harkin, the CFO, told you. He told you that sometimes he has to factor changes in software into his financial projections, but that never happened with Blaze.

FICO walked through so many public financial statements and talked about all the natural disasters in those documents that affected Chubb's bottom line. But you know what was not mentioned in any of those reports? The impact of removing Blaze.

Blaze is nowhere in those documents. Trust me. If there was a connection between Blaze and billions of dollars, even tens of millions of dollars, it would be there.

So let's end this discussion where we started it, which is this concept of value pricing for Blaze.

Mr. Waid testified that the value-based pricing he used was meant to approximate revenues generated or cost decrease, basically how much profit could Blaze possibly bring a company. So they're pricing their licenses in that 1 to $1.5 million range to correspond to the profit that they think they could possibly generate.

So if they're doing that, then the amount of profit Blaze is generating, according to FICO, is the same as the price of the license. And look at the judge's instruction. Disgorgement damages are recoverable only to the extent you have not already taken them into account in determining the lost license fee.

So whether you consider disgorgement in your deliberations or not, the only proper outcome is an award of zero dollars.

Now when you go to the deliberation room, you're going to receive a document called a verdict form. Here it is. For all the reasons we discussed, you should answer "no" and find for Federal on questions 1, 2 and 3, because there was no breach of Section 3.1 or 10.8.

But even if you say "yes" to question 2 because you think Federal somehow expanded use of Blaze after 2016, you should still say "no" to answer number 3. And that's because at the time FICO terminated that license in March 2016, there was no expanded use of Blaze.

If you find in favor of Federal on question number 3, you will see that you can skip ahead to Section II. You don't even need to discuss the questions on page 2.

But if you do discuss them, we ask that you find for Federal on question 5 and fill in zero damages on questions 4 and 6.

If there was no breach of contract, there can't be damages or any copyright infringement by Federal either.

As we talked through earlier, if you consider awarding a lost license fee to FICO, the evidence shows that no willing buyer has with paid more than $3 million for a Blaze license, and most buyers pay a lot less.

That brings us to the last two pages of the verdict form. Because there was a deemed assignment, there could not be copyright infringement by ACE, and all of FICO's claims here fail.

That means you have to answer "no" to question 7 and put zero dollars in response to question 8.

Now we had to break up the copyright and actual damages questions between Federal and ACE because they're two different entities, but any sort of market value damages for this license should be combined.

The last section of the verdict forms concerns defendants' counterclaims against FICO. And for all the reasons we discussed, it was FICO's bad faith termination of the license agreement that brought us all here. So we ask that you answer "yes" to questions 12 and 13 and award whatever amount of damages you think is appropriate to compensate defendants.

FICO took a license that was supposed to last forever and forced defendants to incur costs to transition

away from Blaze after only a decade of use.

Now I want to close by thanking you all for your continued time and attention. Jury duty is hard. And you stuck with us for several weeks, through the snowstorm and now these tropical heat conditions that we're all in. And so we want to thank you for all of the hard work and the time that you've put in. We are very grateful.

Thank you.

THE COURT: Thank you, Ms. Godesky.

Members of the jury, we will take a break until 15 minutes after 11:00, and at that time we will hear FICO's closing argument.

Thank you.

THE CLERK: All rise for the jury.

(Recess taken)

(In open court with the Jury present.)

THE COURT: Be seated, everyone.

Members of the Jury, we're working on it. All right?

Mr. Hinderaker, are you ready to proceed?

MR. HINDERAKER: I am, Your Honor.

THE COURT: All right.

MR. HINDERAKER: So I'm in the unenviable position of being what stands between you and lunch. Good afternoon,

anyway.

I would like to begin by telling a story. It's a story about -- I mentioned -- it's a story about my neighbor, a neighbor. And, you know, I mentioned when we were selecting the jury, when you all were selected, that I live in South Minneapolis, and I'm in one of those areas of South Minneapolis that has an alley. So the block is divided by the alley, and there is that side and this side. And the alley is where neighbors meet, one of the places.

And Emmett Duffy has passed now, but for years Emmett Duffy was retired from the Department of Transportation, Minnesota state, and was the block captain, if you will. Everybody knew Emmett, and Emmett knew everybody else. And so I would be chatting with Emmett; and Emmett would say to me often, Did you get it in writing? And that was his wisdom. If you're talking about something, did you get it in writing. And that wisdom of Emmett is one of the things that this lawsuit is about, because FICO and Federal got it in writing and the writing is the lawsuit.

The consequences -- this lawsuit was brought because the license agreement and the writing in that license agreement have consequences when they're not honored. And the lawsuit was also brought because under the copyright law, there are consequences from infringing somebody else's intellectual property. These two core

elements are what we seek to hold the defendants responsible for.

And in doing that, there is another piece of wisdom, and this one comes from a 14th century philosopher and theologian by the name of William of Ockham. And his piece of wisdom is now -- that is attributable to him is now called Occam's razor. And Occam's razor is simply this: The simplest explanation is usually the best one.

Now, there are parts of this lawsuit that are complex. Blaze Advisor software is complex. The corporate structure of the Chubb Corporation is complex. The corporate structure of ACE Limited, now Chubb Limited, is complex.

But I submit to you in your deliberations the answers to the fundamental questions that you will be deciding are found in the simplest explanations, and they're found in the words that were put in writing in the license agreement.

I submit to you from what you have heard in this lawsuit, if the shoe were on the other foot, would Federal Insurance or ACE Insurance Company be arguing that you should ignore the plain words of the license agreement?

And before we go, let me say a word about disgorgement. The evidence shows that Federal infringed FICO's copyrights when it continued to use Blaze Advisor

without FICO's permission after the license agreement was terminated. During that period of time, Federal acted like it was the owner of Blaze Advisor. And then a different company called ACE American, as you know, a different company in January 1, 2017, decided that it would be the user of Blaze Advisor, and it then acted as if it owned it.

ACE American has never had permission to use Blaze Advisor in connection with selling insurance like it did in this case. And so they did so from January 2017 until some time in April 2020. And because of that length of time, the revenue amounts, the gross revenue amounts, that are connected to the infringing use of Blaze Advisor, they are huge. 21 billion is a huge amount of money. But when you look at 21 billion in the context of all of the revenue that Chubb Limited had over that same period of time, that 21 billion is 14 percent. 14 percent is not a big number.

If Federal had stopped use when the license agreement terminated, we wouldn't be here talking about disgorgement. There would be none. If ACE American never thought it owned Blaze Advisor and used it without FICO's permission, we wouldn't be here talking about disgorgement, because there would be none.

The disgorgement arises from their infringement. The size of the disgorgement is because they are so huge. But the disgorgement is -- and I might say, the disgorgement

is not compensation to FICO. The disgorgement is the consequence that the copyright laws say follow when you infringe intellectual property.

So let me go -- let me provide an overview of FICO's claims to try to focus on what we actually are contending.

We have both the defendants, of course; and while the claims overlap, they also are different. So against Federal, we have the breach of paragraph 10.8. And 10.8 occurs when there is an event that significantly changes the circumstances of the client, significantly changed the circumstances of the client's use of Blaze Advisor.

So at the time of the original license agreement, Blaze Advisor was going to be used in a 12-billion-dollar company. Because of one of the events of paragraph 10.8, Blaze Advisor is now going to be used in a 35-billion-dollar insurance company. That's a big difference.

Now, Federal did not request FICO's consent, and Federal and FICO could not agree. And so after 60 days, not immediately, 60 days after Mr. Carretta's notice of breach letter, FICO terminated the license agreement. And Federal, rather than honor a license agreement or use software only with permission, treated it as its own and did not stop use.

So that's paragraph 10.8. I submit that on all the evidence, there is really no serious dispute that may

even be admitted, though it is admitted in their interrogatory answers, that Federal disclosed and permitted unauthorized third-party consultants to access and use Blaze Advisor. That is a violation of paragraph 3.14.

Federal did what it represented and warranted that it would not do. It did give third parties access and use to Blaze Advisor. And then, again, for a second independent reason for terminating the contract, Federal continues to use Blaze Advisor as if it was its own.

There are copyright infringement claims against ACE American. ACE American is a different company, as I've said. ACE American has never had rights under the license agreement. So regardless of what you may conclude, and I'll suggest why you should conclude in favor of FICO, regardless of what you may conclude relative to Federal, ACE American has no rights to use Blaze Advisor. ACE American's use is copyright infringement, and it lasted for years. ACE American used Blaze Advisor in connection with selling insurance, just as Federal had before it.

Now, as a consequence, we have actual damages, and we have actual damages which are compensation from both Federal and ACE American. The actual damages under the copyright law is the same amount of damages as you would award under the breach of the license agreement, the fair market value for the infringing use, for the unauthorized

use of Blaze Advisor for the period of that unauthorized use.

I'll comment in a while about this argument about a perpetual license. Having a perpetual license when the period of use is during the infringing period for a number of years, the professor would say is counter-factual. We would say it makes no sense.

And then under The Copyright Act is the profits. We are entitled to the profits from Federal for its period of infringement, and we are entitled to the profits from ACE American for its period of infringement.

Consequences from infringement -- you know, the laws of the country say that creative authors, writers, what they create is worth protecting. Mr. Marce has spent most of his life creating and writing Blaze Advisor. It is also a work of authorship protected by the copyright laws.

So let me, with that construct, go to the beginning of the story for a little bit.

The specialty lines of Federal wanted to expand and grow, as we know, into the underrepresented marketplace of the mid and small market accounts. It had this, as we have seen, key strategic initiative. Duck Creek was already in its architecture. All of its pillars are already in, are already there. It is a viable and ongoing business, but it wants to do what it hasn't been able to do before.

It wants to go into a different marketplace, a small and mid, and it needs -- and it knows and wants Blaze Advisor to do it, and it tells us why; because movement into this has been difficult, it requires teams and systems to handle an increased volume of work, more transactions, policies, claims, in an environment where Chubb's current expense management strategy does not allow for the increase of staffing.

To succeed in that marketplace, you need to be able to handle a higher volume, a lot more transactions, a lot more applications. You have to have the technology. The technology that they were looking for was Blaze Advisor. The technology that they licensed was Blaze Advisor.

There is in the jury instructions the reference to the fact that when all of these companies are under the same control and doing the same thing in joint, that is, to sell insurance, the revenue from all of these companies is recoverable from the two defendants.

One element of that is, Well, what is this Chubb & Son, division of Federal, and what is the RFI all about? Well, the RFI is about the fact that Federal's division of Chubb & Son is the manager of many other insurance companies. Well, what does that mean? It means that there are many other insurance companies with no employees who have policies of insurance issued in their names.

And how is that at all possible? Because Federal's division Chubb & Son provides the operating personnel and all of the management services to be able to do that. When we had Mr. Taylor testify on the video, where there were a number of these management and service agreements that were entered into evidence, and all of them have very much this language.

The manager, Federal, division Chubb & Son, is empowered in the name and on behalf of said company, the writing company, to effect, sign, countersign and issue all policies or contracts of insurance and reinsurance. And it goes on and on. All the authority that goes to the manager, concluding and manage the business of insurance by and on behalf of the company and take all necessary measures for the company's production -- protection.

That is why, one of the reasons why Blaze Advisor was of interest to Federal, because not only did it sell insurance in its name, it was the arms and legs that made it possible for insurance to be sold in the name of dozens of other what we now know are writing companies.

And when this topic is addressed in the government filings to the SEC, they say the same thing. Chubb & Son provides day-to-day management and operating personnel to all of these other subsidiary insurance companies.

So there was an interest in Blaze Advisor because

the key strategic initiative was to move those companies into this other market.

I would like to take a breath, but also to slightly change topics just for a moment, and I would like to discuss the issue of credibility.

As Judge Schultz has instructed you, you are the judges of credibility. If you believe a witness was telling the truth, you can believe it. If you believe a witness was not telling the truth, you can believe some of what the witness says or you can believe none of what the witness says. That's up to you.

And in this lawsuit, I raise this now in the context of Chubb & Son and the -- being a manager, as I recall the testimony of Ramesh Pandey.

"Have you ever heard of Chubb & Son, division of Federal?

"Say again.

"Had you ever heard of the Chubb & Son, division of Federal, before this litigation?

"Never."

And he's an officer. Was that truthful?

You know, and as nice and as smart a woman as Ellen Garnes was, Is there anybody here who doesn't know where their paycheck comes from?

And as nice -- I found him nice -- a person as

Claudio Ghislanzoni, why did his whole demeanor and tone change when I was asking him questions as opposed to when he was on direct?

These are factors that you can consider as you weigh, as you weigh the evidence.

Let's go back to the license agreement. We know that FICO was not the only rules management system that was sent an RFI. There were many. As Mr. Wachs said, the first step was to get to the short list. After being on the short list, the license agreement was made. We're talking 2006.

And then through the progression of the rest of that year, there is -- they go from the original license agreement to the divisional. So that now it's not just one application, but it's the entire specialty lines division.

Why do that if Blaze Advisor isn't adding to your business? As Mr. Folz said yesterday, we test it out; and if it's valuable, then we're willing to buy more. So they did buy more, broader scope of license.

Then -- oops. Same slide. And then they go to Amendment Two. Tested it out in divisional. They liked it. Why would you add more unless it was giving you business benefit? And so then they went to enterprise-wide, enterprise-wide of Federal.

And by going enterprise-wide, as Mr. Folz said, now, rather than being limited to the specialty lines, they

brought it into the commercial lines. And they tell us in their interrogatory answers. The interrogatory answers have been a bit denigrated lately in the arguments, but let's just recall. It's not FICO's answers. It's the defendants' answers. And let's recall. It's under defendants' sworn testimony that they're truthful.

And so let's look at what the defendants say under oath. With the enterprise license -- now the corporate business systems is using Blaze Advisor, as before on Premium Booking. Now, with the enterprise license, Chubb Commercial Insurance is using Blaze Advisor for CUW-IM, TAPS and IRMA. Those were never permitted before Amendment Number Two.

I submit just this early history of the continuous increase of license scope is one piece of evidence that proves the value of the connection of Blaze Advisor to selling insurance.

Let me turn for a bit to the negotiations.

Mr. Folz, as you heard yesterday, had nothing to do with the negotiations of the original license agreement. Jandeen Boone did. Jim Black did, but he's not here.

Every license agreement, as we know, is individually negotiated. And as you heard it described by Mr. Waid, there is the circumstance where, Is the licensee negotiating into FICO paper, as he described it, or is FICO

negotiating into the licensee's paper, which is to say, which party's base contract, standard contract, is the base upon which the negotiations are happening?

In this case, Federal, Jim Black, is negotiating into FICO's standard language. And as Ms. Boone says, I am attaching the standard Blaze Advisor license agreement.

Now we know that the 10.8 provision was lightly negotiated. This shall not be unreasonably withheld, is the addition requested by Mr. Black that FICO had no problem, agreed to.

Every other element of that provision is standard FICO language. Every other element of that provision is there to protect FICO's interests in Blaze Advisor.

Now we have seen other license agreements where a licensee has been more aggressive on this, where a licensee has in fact negotiated with FICO, and the agreements of FICO's protection with respect to the 10.8 no assignment provision have been modified. Every agreement is a new agreement. And that happens, but it did not happen in this case except for unreasonably withheld.

Now, we also know that paragraph 3.6, which is the right of third parties to use, was heavily negotiated. This is what the standard FICO language license agreement looks like. There is a 3.5, and then there is a 4. There is no 3.6. The 3.6 was the product of efforts by Mr. Black to

include within the license agreement the rights of a consultant, ACS Solutions, to use Blaze Advisor.

Ultimately, FICO did consent, but it wasn't a simple thing. In the background are the various iterations back and forth that you saw in the redlining between Ms. Boone and Mr. Black to get paragraph 3.6 to a place where FICO was able to agree to it.

And FICO was able to agree to it because, as finally drafted, paragraph 3.6 had these protections for FICO: The use by the consultant will be for the sole and exclusive purpose of fulfilling its obligations to Federal, in this case Chubb & Son; The use was also subject to the terms and conditions of the license agreement; The use does not exceed the limitations on use or other restrictions of the license agreement. Chubb & Son was made responsible for ensuring that ACS complied, Chubb & Son/Federal. Chubb & Son/Federal, not only did they ensure that ACS complied, if ACS did not comply, they were made liable to FICO for any such breach. And it was clear under 3.6 that no other rights were granted to any other party without FICO's written consent.

It was not a small thing in FICO's mind to permit anybody to use Blaze Advisor without guardrails. In the license agreement, those guardrails are the terms and conditions of the license agreement itself. With respect to

this consultant, the guardrails were 3.6.

But now let me return to paragraph 10.8, the lightly-negotiated provision. As I said at the outset, what the two parties here did was they put it in writing, and this is what they agreed to.

I heard just a few moments ago that Federal didn't understand what paragraph 10.8 meant. Do you blame the victim when something is wrong? If Federal didn't understand what paragraph 10.8 meant, it should have been addressed before they signed the agreement. To suggest that FICO is responsible to have Federal understand the agreements that it signs and the words that are given, enough said.

So we know that FICO has invested decades of time and money to make Blaze Advisor an industry leader in the business rules management software space. We know that Marce, Mr. Marce, Jean-Luc, for example, has put his professional career there. His more than three million lines of code, his patent of functionality in Blaze Advisor, that is simply not available from the competitors. And that's not to denigrate any competitor.

And that's not to say that another competitor can't be used. In fact, I will comment in a while that the defendants chose to use Drools when they finally took Blaze Advisor out. I'm happy that they're -- they find Drools

acceptable. The point is, they didn't abandon having a business rules management system to assist with them in selling insurance.

After four years of infringement, they finally went someplace else, but not to abandon the technology, not to abandon the benefit that the technology gave them to sell insurance. So because of that investment in the code, in the product, the business, actually, of Blaze Advisor, FICO keeps exclusive control over those rights.

And when it puts protections around it, it puts them in writing, and this is some of the writing. So why? Why have it? Well, the first sentence we all agree doesn't have any application, and the why of that is pretty straightforward. If my client wants to assign it to a stranger and they have an agreement, I hereby assign it to you, you don't get to do that without having FICO having consent. FICO's license agreements don't travel in the world without FICO control.

But the second sentence is the heart of the matter here. And I might say that, you know, when a client is successful organically, FICO applauds. Make more money. Do better. But when circumstances occur where the client is in a very different position than it was at the time of the original license agreement, when those circumstances occur, and so what we have at the time of the event is

fundamentally different from what we had when the license agreement was signed, then paragraph 10.8 says FICO gets -- 10.8 says FICO has the right to revisit things.

Now, I would like to go to the language. Words matter. And what the words actually are is, "Each such event shall be deemed to be an assignment."

The argument of the defendants seems to suggest that there is an animal that is called "deemed assignment," like there is a real assignment in paragraph -- sentence one and there is something else called deemed assignment. There is no something else called deemed assignment. What there is, is an event that fundamentally changes the nature of the circumstances around the client and that shall be deemed to be an assignment, considered to be an assignment. And why? Because then it is subject to this section. And why does that matter? That's what gives FICO the right to consent before you use Blaze Advisor after the event.

So what are these events? A change of control of the client. The client never changes, just that the client now is owned by somebody else, but they're still the client. Or if client is merged with, acquired by or acquires another. It's still the client. It has just simply undergone the fundamental change of circumstances. Or undergoes a reorganization or otherwise acquires the right to process the business of another entity. It's still the

client, but now it's gone through a different kind of fundamental change. It's processing somebody else's business. So the volume has gone up.

And it isn't that FICO has any say in whether control changes or whether there is a reorganization or whether somebody is quiet. FICO's only say is, We get to revisit and consent to whether you want to use Blaze Advisor in your use circumstances.

We've had the conversation many times about value-based pricing. And when -- and that's how FICO prices. And so it looks at the value that the software can bring to the organization. So in 2006, when it was pricing that license agreement, it was looking to the value that Blaze Advisor could bring to the use of Blaze Advisor inside of a 12-billion-dollar organization.

Now we have a fundamental change of circumstance, and Blaze Advisor is going to be used inside of a 30, 35-billion-dollar organization, something twice as big. Well, that significant change presents a significantly different value proposition for Blaze Advisor. Blaze Advisor can bring much more value inside of a 35-billion-dollar company than it can under a 12.

And as I said in opening statement, and as Mr. Waid said, were FICO to license to a 5-billion-dollar company, same software, but the value to the

5-million-dollar company is much less because the company is much smaller.

So value-based pricing aligns with the size of the overall organizations in which the software is going to be used. You double the size of the organization, you change the value proposition. FICO in writing has said, We get the right to revisit.

Now, why, why are these events included within 10.8? One of the reasons that companies merge, two companies come together to be yet a bigger company, is to grow the business overall. There is the adage, one plus one equals three. And sometimes it's just called synergies. So if you're a part of a 12-billion-dollar organization and now you're part of a 30-billion-dollar organization, you would expect more referrals, more business to your unit just by the fact that you are in that much bigger organization.

And so this is what Chubb said right after the, right after the merger. "We completed the largest merger in insurance history and integrated two complimentary insurance organizations." That was to make one and one three.

"In doing so, we furthered our long-term strategic objectives to grow and diversify our business by adding to our product, talent and distribution capabilities, which, managed right, will generate substantial shareholder value well into the future." "Shareholder value" means greater

revenue, greater stock price. One and one equals three. And that's one of the reasons why these companies merged.

And so FICO put it in writing that when such an event happens, it has the right to have its consent requested, it has the right to have information upon which to make an informed consent, and it has the right to negotiate with the client, who hasn't changed, but the circumstances have, for how that consent will be granted.

This is Mr. Schreiber's testimony. "It sounds like you're saying it's a bad thing, fair revenue. Good, honest, clean, fair revenue. Yeah. Yeah. If I sold it to a 12-billion-dollar company, now a 30-billion-dollar company is using it, it's a different price point. That's all."

Common sense. FICO had the right to do it only because it was in the license agreement and Federal agreed to it. As I said, consent was never requested. The efforts to find and keep the long-term relationship failed. I guess you can blame both sides. And the bad news for FICO was that it lost a client of ten years that it really had a lot of value from.

And, again, as I said at the early outset, if Federal had honored the termination of the license, and if Federal had honored paragraph 9.2 that says, What do you do on termination and stopped use, we wouldn't be here.

I might also point out now that when we get to

that commercial proposal where Federal said, Well, here's what we're going to do, there never was a conversation -- there never was a request from Federal to say, You're right, license agreement is terminated, let's end the relationship, but I would like to discuss with you a migration plan, so I can leave Blaze Advisor and go on to something else. Never had that conversation. Just ignored us. Kept on using. And then ACE American took over.

So the defendants want to focus on this: "And client shall make no expanded use of the Fair Isaac products as a result of any such event unless and until Fair Isaac provides such written consent, which will not be unreasonably withheld."

And I submit to you, ladies and gentlemen, that in the English language "and" means and. It is as Mr. Carretta said a second independent restriction on Chubb & Son. And Chubb & Son shall do nothing different, lock it down, until that written consent is given. Mr. Schreiber's words, "This expanded use bit on the side is really kind of a safety net while working through the change of control issue is how I read it.

"Just make sure you're not running additional business through it."

There was the contention that the meaning of "expanded use" is somehow a mystery. Let's just use our

common sense. Expanded use can be running additional business through an existing application. Expanded use can be adding applications. Expanded use is not one thing. Expanded use is whatever common sense says is an expanded use.

And Mr. Schreiber says, "Just make sure you're not running additional business or you're not creating new applications, not running additional business through it or creating new additional applications, even if it was the legacy enterprise. An assignment never was agreed to and all we're saying is, you know, lock it down.

"What's that period of time to lock it down?

"About 30 days.

"Why 30 days?

"That's the normal period of time in which you make an agreement, consent, new license, or you don't, terminate."

"Lock it down" is not forever, and "and" means and. There are no rights granted to Federal because it is obligated to lock it down while it's negotiating for consent; and if it doesn't want to use Blaze Advisor, bad for FICO, but fine. Stop.

Mr. Carretta, on the same point, "Don't do anything different today from what you were doing before while you're in this period that we provided to them." You

recall in his letter his initial period that he provided was the 30 days that ultimately was extended.

Mr. Waid, "It's an additional constraint that until consent is mutually made, lock it down and don't do anything with that software, lock it down."

That's what FICO put in writing. That's what Federal agreed to in writing. "And" does not mean, accept that, I have additional rights. "And" does not mean, but I have other rights. Nothing in that "and" provision gave Federal any rights to do anything but lock it down until they got consent; or if they didn't get consent, then stop use.

In the fairness of it all, from FICO's point of view, that's its business model to price this product on a value-based; and if Federal doesn't like that business model, don't agree to a 10.8, but they did.

Now let's turn to this commercial proposal, so-called, on February 25. This is what FICO was told: "Chubb shall have the right to change the applications utilizing Blaze Advisor at any time in its sole discretion without FICO's consent so long as the named applications do not exceed an amount of 15." Well, that's the FICO, the sucker, comment from Mr. Schreiber.

But before we get to that, how is it that the licensee is telling the licensor what the terms and

conditions of the license are that I will change the applications utilizing Blaze Advisor at any time in my sole discretion?

I submit there was no -- there was no rush to lose a long-term client, but we did learn in this communication everything that was necessary to know in terms of the operation of paragraph 10.8. There is no doubt that Blaze Advisor is going to be now used in the 30-billion-dollar organization. There was no doubt that they would use it in any way they wished, changing applications and running additional volume through it.

On this point, I do agree with the defense counsel. This is everything FICO needed to know that its commercial reasons for having 10.8 were triggered. Its software was now going to be used in a 30-billion-dollar organization, rather than the earlier one of 12 when the agreement was originally made some ten years earlier. Clear notice. They acted like they owned Blaze Advisor.

And as Mr. Schreiber said -- Sawyer -- I'm sorry to say, sorry -- when he was talking to Henry Mirolyuz, "It's more likely than not that the decision would be in the future to migrate operations from the Legacy ACE business onto the Legacy Chubb systems and specifically the underwriting and renewal underwriting applications for which Blaze Advisor was a part of."

The argument we just heard was criticizing Mr. Carretta, the lawyer, for not knowing about the business side of the discussions with Mr. Waid. The business people reviewed this proposal. And as Mr. Carretta said, "I was told to write the e-mail the next day rejecting the offer, the proposal, because the business people had reviewed it.

"What did Mr. Schreiber say when he saw it?

"Terrible proposal. Bad-faith proposal. Disgraceful."

He was looking at that language of sole discretion, and this is where he made the FICO, the sucker, comment.

And what did we learn yesterday from Mr. Folz? Within a couple -- a week, ten days of the announcement of the merger, he was involved in discussions on it with the ACE people and how to integrate the technologies of the old Chubb Corporation into the new Chubb Limited corporation because of the ACE acquisition.

February 25 FICO was told, "We are going to use Blaze Advisor in the new organization. We're going to change it any way we wish."

Sawyer's comments with Mirolyuz, "More likely than not. Blaze in the new organization."

Phil Folz. "Yeah, we were integrate -- we were discussing integration of the technologies right away."

Schreiber. "Loved the client. Wanted to maintain a reference. Really wasn't looking to do anything other than figure out, How do we stay whole and continue the relationship, but more important to us was the long-term business relationship."

He was the person who originally brought in Chubb & Son in 2006. The last thing he wanted was to lose that long-term relationship. This notion of rush to termination for some reason just doesn't fit the facts. If they wanted to honor the license agreement and stop use, as I said before, we wouldn't be here. FICO would have no damages. It would just have a lost client.

This is Mr. Waid's response. He was the one who directed Mr. Carretta to write the e-mail. "We grant licenses. Our clients don't grant themselves licenses.

"Did you draw a judgment whether it was a good faith or bad faith proposal?

"My impression was that it was bad faith."

We were told exactly what was going to happen. We were told the value proposition of Blaze Advisor was changing. We were told that the events that made 10.8 commercially reasonable had happened. And we then learned through the lawsuit, because it takes litigation to get information from the other side, that they did exactly what they said they were going to do.

In 2016, about 360 million dollars of additional revenue, additional insurance policies representing that amount of money ran through systems for Legacy ACE insurance companies that had never before sold insurance in connection with Blaze Advisor. In 2017 the number was 995 million. 2018, 807 million. In 2019, 1,411,000,000. All told before they stopped use, 3.57 billion dollars of additional volume. Never before used in Blaze Advisor application, ran through CUW-IM utilizing Blaze Advisor because there was a merger. These are all Legacy ACE writing companies that never before had access to Blaze Advisor except because of the merger.

So let me turn to -- I want to turn to this: Before I do that, let me just say this: There is this notion that we're just talking about applications that contain Blaze Advisor and the insurance policies ran through the applications. Not true.

Mr. Harkin was here. And he testified, "The information that I pulled from our systems to put forth in the interrogatory answers was the insurance policies and the dollar value of the policies that did two things. They ran through the application, and they used Blaze Advisor. Tied directly."

And that 3.57 billion is the additional volume that ran through, that utilized Blaze Advisor only because there was a merger, and now ACE and Chubb was, as they say,

now one. The interrogatory answers belie the notion of no expanded use unless you adopt the proposition that there is only one common sense definition of expanded use, and that's if you have more applications. But as Mr. Schreiber said, more volume is expanded use, too, and common sense says more volume is expanded use.

So let me sort of wrap up the 10.8 discussion.

FICO put it in writing, and Federal/Chubb & Son agreed, that certain specific events would be considered the same as an assignment, not that it was an assignment. It would be considered the same as an assignment, subject to this section. So FICO's consent was required to continue to use Blaze Advisor.

The three specific events of each one were the circumstances where the client has significant changes as compared to the circumstances of the original agreement; and because FICO's licenses are value-based, the value-based pricing aligns with the benefit that FICO can bring to the organization. And so when the organization is twice as big, FICO gets the opportunity to consider whether the fees are still fair.

We have that significant change of circumstances. FICO had the right to revisit the fairness of the fees, but Federal did not honor that. They acted like they owned Blaze Advisor, and they just went ahead and did what they

wanted to do.

FICO lost a client, terminated the license agreement to protect its own software; and the use continued on for another four years until this litigation was well into its time.

I have just described what FICO put in writing and what Federal agreed to. I would like to change topics now.

Why -- we saw this. I pulled these slides from the opening of the defendants, and we heard it again today. And so what I'm asking you in my rhetorical way in this argument is, Why do defendants work so hard, do such violence, to the language of 10.8? And I'll go through what they are doing with it. And I submit to you that this distortion, this contortion, of the language of 10.8, they do that because they want to try to hide the fact that ACE American is a straight out, no apologetic, copyright infringer, never having rights to Blaze Advisor.

So let's look at the violence that happens to these words. So here we start out the original, the original language of 10.8. Well, okay, where it says "client" let's change it to "Federal." No quarrel. But why don't we do it for every instance where "client" appears. If client is Federal in that first line where it appears twice, client is Federal later on in the same paragraph where it speaks to the client. But they don't. I submit to

you that being consistent is not possible with the reading that they put on to paragraph 10.8.

What's the next change? Well, let's remove the change of control language as one of the events. Well, why do that, I suggest, I wonder? Well, you want to eliminate the change of control language because Federal did in fact become owned by someone else. Federal underwent a change of control. Federal, as a consequence of the merger, became owned by another one of these entities called ACE INA Holdings, Inc.

Now, the defendants, they really want to be owned by Chubb Limited, the big thing, but it's simply not true. And one of the uncontested facts that the judge read to you at the beginning of the case is that after November -- after January 15, 2016, Federal was a wholly-owned subsidiary of ACE INA Holdings, Inc., a fact that would be ignored under defendants' reading.

So the truth is different from the violence to this language because Federal did have a change of control, and it became under the ownership of ACE INA Holdings, Inc.

So what's the next step? Ahh. Federal was the client before, but now where "client" appears again, the client becomes Chubb Limited.

Now "client" in the same paragraph means two different things, two different companies, and, again, it

ignores the uncontested fact that Federal wasn't -- was directly acquired by ACE INA Holdings, Inc. All of this effort is for the end goal of having you think that all is one; and if you have Chubb Limited, everything underneath it is the -- just all in the same family and we can do whatever we want if we're all underneath that.

They would like you to ignore the fact that there are about 100 some different, separate corporations that have different existences, and that determines what this, how this language works and whether ACE American has any rights at all under the license agreement. And certainly "client" cannot be two different companies in the same sentence. And it certainly does not make ACE American a client.

So we have the slide from defendants that has ACE American on the outside. This is what the corporate structure really looks like. Each of those dots is one of the subsidiary corporations. And you will see where Federal sits in that organizational structure, and you see where ACE American sits in that organizational structure. They are not owned by the same company directly. ACE American is certainly not owned 50 percent by Federal to be an affiliate under the license agreement. Separate companies.

Really, when you look at the facts, you cannot escape -- ACE American cannot escape the reality that it had

no rights to use Blaze Advisor, and it's a straight out, unapologetic infringer.

At the opening statements, we heard from the defense that understanding paragraph 10.8 requires, "Hard work." I submit to you that understanding the plain words of 10.8 does not. The hard work is getting through the violence that is done to the words in the defense interpretation.

So going to the point that ACE American is a straight out infringer with no rights to Blaze Advisor, again, let's assume for a moment that the license agreement was not terminated. How does ACE American come into the play? It doesn't. Different company. Just as Pamela Lopata said, It just happened to me, right. It just happened. All of a sudden I'm ACE American. Well, it may just happen, but that doesn't give you rights to use Blaze Advisor without FICO's consent.

So we get through the defendants' arguments on this 10.8, and you would have to first believe that somehow Federal's rights under the license agreement become the rights of ACE Limited; and then you have to argue that because ACE Limited/Chubb Limited is the parent of all subsidiary companies, that somehow Federal's rights are transferred to ACE American.

That simply does not work, not if you have any

fidelity or honor to the fact that each of those 100 some corporations have a separate legal existence. Chubb & Son organized itself in this way. Fine. You can't escape its responsibilities because it's a complicated structure.

And I think the fact that ACE American took over the use of Blaze Advisor on January 1, 2017, is simply unchallenged.

I commented about the credibility of witnesses. And I would like to take a breath and comment for a moment on the credibility of the proof, and I think you can judge the parties' positions as well by the quality of their proof.

So I mentioned this a couple times already. That's the quality of the defendants' proof of the organizational structure of ACE Limited. The real facts are like that (indicating). The real facts show that ACE American is not an affiliate of Federal as defined by the license agreement.

Defendants want us to avoid the consequences of the real facts, but they cannot be avoided. When you infringe copyrights, you do. We heard from Mr. Bakewell, their damages expert, what was the quality of his proof? That was some of it.

What was the quality of the proof of the chief financial officer, Mr. Harkin? Did he come here with

financial records? Did he come here with cost reports? Did he offer any information to you upon which you could make your judgment? I submit he just came with slides.

So let me move on to paragraph 3.1. Federal represented and warranted that it would not permit an authorized third party consultant to use or access Blaze Advisor. What did it do? It admits to us that AppCentrica used Blaze Advisor when consulting with Chubb Insurance Company of Canada. It admits to us that DWS Group used Blaze Advisor in consulting with Australia Chubb.

What did Mr. Ghislanzoni say? "I met with Zorica. I remember her mentioning AppCentrica being one of the consultants they were using in Canada.

"And in terms of the work being done by Chubb Australia, you were aware that Chubb Australia was using a consultant in connection with this project called DWS Group?

"Yes, I was aware of that.

"And by 'this project,' I'm talking about the project of creating the Australian Evolution application from the Canadian Evolution application. We're on the same page?

"Yes.

"It required the paragraph 3.6 with the consent given to ACE Solutions?

"It required all of that legal work and all of

those words to put guardrails and protections around the use of ACS solutions, and ACS solutions was the same thing as AppCentrica and the same thing as DWS Group, a consultant working with the insurance company."

This is in evidence, and Martin Sill you may recall is one of the DWS people. He is going to pull together notes on how rules are implemented in Blaze currently. Very straightforward. Any doubt that he is accessing and using Blaze Advisor? I think not. Any doubt that he had permission? There is none because he did not.

The importance of this to FICO has been undermined, denigrated, but FICO thinks it's awfully important because it puts into 3.1 a variety of controls that will not happen. Its license, its software will be used for the internal business use only. No one can alter, change, modify, adopt, translate or make derivative works. No one can reverse engineer. No one can disclose or permit use by third parties. No one can assign, sublease -- license, lease, transfer or distribute the Fair Isaac products. They cannot be disclosed or published in the benchmarks. No use provided by any third party software. It's important. Decades of creativity. Decades of investment. Millions of lines of code. All important.

Mr. Carretta said this. Let me back up. I guess it's not on the slide. Mr. Carretta simply said when asked

about this, These restrictions are absolute. And that's what they are. You are pregnant or you are not pregnant. You have permission or you do not have permission. It doesn't matter if you're consulting with Chubb Insurance of Australia or Canada. Do you have permission to do that? Yes or no. In this case, no.

Mr. Carretta sent his notice of termination letter on March 30th of 2016. He specifically pointed out at Section 9.3 of the agreement, on effect of termination says, stop. They did not.

If we went into the body of the letter -- and as you know, it's exhibit -- I want to say 90; but when you get in your deliberations, the exhibit will be available to you. When you go into the body of the agreement, you will know that he said there was breach of paragraph 10.8.

And he said there was breach of paragraph 3.1 because unauthorized consultants that had access and use of Blaze Advisor. And he said, mentioned, referenced, the fact of the two applications and then Canadian applications outside of the United States.

As Judge Schultz has instructed us, you have in your instructions, the issue of a territorial limitation is not in the case. I ask, Why do we spend so much time on that?

You know, a magician really doesn't do magic.

What a magician does it keeps your attention over here while it's really changing the rabbit over there (indicating). We're spending a lot of time on an issue that's not in the case of territory to keep our attention away from what was really happening in the case.

And as Mr. Carretta had said, when he wrote that letter, he looked at the license agreement, and the license agreement has a definition called Territory. Physical location of the Fair Isaac products means the United States of America. Whether he was right or wrong isn't the point. The point is, he had a good faith reason for doing what he said.

Also, the testimony that we've heard over and over again about this territory issue is the testimony from the salesmen. Sawyer, Schreiber, great people, but they're the salesmen. And I'm not undermining salesmen, but do you think a contract term changes because a salesman says something or knows something?

Mr. Carretta said, I have no knowledge of that. Mr. Waid said, I had no knowledge of that until January of 2016.

The license agreement has a provision called paragraph 10.5. Unless you have something in writing, the license agreement doesn't change. It has a thing called paragraph 10.4. Unless you put it into writing, there is no

waiver. My point is not to put all of that into issue in the case. My point is to say, Mr. Carretta had a good faith basis, may be wrong, for doing what he said.

We heard yesterday from Mr. Folz. He had his -- yeah, Folz. He had his own understanding of what "enterprise" meant to Chubb. It means worldwide. Well, maybe not to everybody. When I asked him, if you have a misunderstanding, how do you figure it out? Who do you go to? You go to the writer; you go to the license agreement.

If we have anything here, it's a misunderstanding because as we know from the testimony, sometimes Schreiber said global, sometimes he said international -- I'm sorry -- sometimes he said United States. And he said, I woke up every morning knowing it was a United States contract. Misunderstandings are not bad faith.

So now let me, let me focus on what this lawsuit is about. As the instructions say, the violation of 10.8 and the violation of 3.1 because unauthorized consultants were permitted to use Blaze Advisor.

And so I turn our attention to this provision of the license agreement, 9.2(c). Straight out what it says, first sentence, "Fair Isaac may immediately terminate this agreement without a requirement for prior notice or a cure if client violates any terms of the licenses granted in this agreement."

Straightforward words. Violation of 3.1 is a violation of one of the license restrictions. It is a violation of the license granted in the agreement. What does 9.2(c) say? FICO has the right to immediately terminate. You don't have to get to the issue of materiality with respect to 3.1 because the license agreement says you don't have to.

Judge Schultz's instructions say, you don't have to when the contract says you don't have to. Now, I've given you all of the evidence that says indeed it was material, very important to FICO, to keep those guardrails around unauthorized use, but you don't have to get that far if you just look at paragraph 9.2(c). The license agreement itself gave FICO the right.

So let me turn to the damages discussion. There is actual damages -- actual damages. Those are the fees that you will determine through this hypothetical negotiation, the fees between a willing licensor and a willing licensee for that period of unauthorized or infringing use. We're talking about a four- or five-year period with the language of the industry says, as you have heard, a term license, one for a limited period of time.

You just heard argument about people wanting to buy a perpetual license. A perpetual license forever makes no sense when you're negotiating a license for a limited

period of time, a period of time of the infringement. But I will say more about that in a moment.

And then the second category is the disgorgement, which follows simply from The Infringement and Copyright Act.

So let's look at the evidence. Let's just look at the evidence. What do we know? What do you know about a willing licensor and a willing licensee in the circumstances of this case?

We have a license agreement that's come to an end. And now the licensor, willing, and the licensee, willing, have to come to terms with what a fair price would be for the use of Blaze Advisor for that infringing period of time.

Well, Mr. Waid described that in some detail. He described the standard FICO pricing guidelines. He has described how they apply. Excuse me. He described the dynamics of licensing, fee licensing negotiations in 2006 when Blaze Advisor was -- had been on the market, what, six, seven areas by then. Hadn't gotten the traction in the market that it has now. He discussed all of that. He discussed how the pricing model stays the same, has been the same, but that the discounting practices are different now because he doesn't have to chase clients like he did in 2006.

We saw yesterday from Mr. Folz -- he was quite

proud. They got a great deal, he said. First in. He paid FICO half of what his budget was to license Blaze Advisor. Completely aligns with Bill Waid's testimony of the dynamics in 2006. Chasing revenue. Not true in 2016.

So the way FICO would in the normal case, in this circumstance, they would price based upon what's called a named application pricing. And as all value pricing at FICO, it depends on the size of the application. The bigger the application, the more the fees; the smaller the application, less the fee.

And so he started with the defendants' own information. It's Plaintiff's Exhibit 517 in the record, Plaintiff's Exhibit 517. That's where, the starting point. And then he takes and applies -- and you saw he applied -- he took the relevant information out of that document that he would use in sizing an application. And then I'm just going to go through this one, not all of them. And then he showed you how he took that information with CSI Express, and he sized it across all of the factors of the pricing matrix, and he got to the conclusion that that wasn't very large.

So then the next step on a named application license was to look at, Well, given the different sizes, what is our -- looking at our guidelines, what's our deployment fee? Is there a multi platform uplift? What are

the development seats? What's the annual development fee. And then you drive an annual fee. 8 million, 250. One can say that that's a lot of -- that's a big number, and, of course, it is. One can also say, that's a lot of applications that you're using without permission, and that is true, too.

Now, the shortest period of time that FICO licenses for is one year. So Federal used it unauthorized, infringed, Blaze Advisor for nine months; but because the shortest period of time that we license for is one year, Federal pays a one-year fee. The same is true on ACE American.

Some of ACE American's use went into 2020. If you want to have a license for 2020, you buy a year. You don't buy it by the month. So that will go into the -- that will go into the next slide where you say, all right, you've got all those applications. You have an annual fee. How many years?

And on the standard FICO pricing, the beginning of negotiations, $36,542,831 standard FICO fee with that many applications for those many years. And that, of course, is the beginning, the start of the negotiations.

Are there other factors that come into play? Of course. Does the licensee have a say, have an oar in the water? Of course. But neither party gets to have a fee

just because it's the fee that they want. You have to consider what they can get in the dynamics of the negotiation at the time. How much will they move their position in the dynamics of the negotiation at the time?

And Mr. Waid, from his experience, identified these factors that would be ones that would -- he's seen and ones that would move him one way or the other.

So let's say this client had existing revenue streams, in addition to what was being negotiated. Well, that would influence Mr. Waid in the negotiations, and it would influence the licensee to say, Hey, let's reduce the price on this one because I'm already buying licenses on these other products; but if the licensee has no other products from Blaze Advisor, there is no other license stream or the licensee has no leverage, and FICO has no incentive to change. And the same kind of dynamic goes down through -- I'm sorry -- goes down through the rest.

Well, okay, we have this license agreement, but does FICO have the opportunity to sell more product? If so, it will reduce its price to get in -- to have the opportunity to sell more product; if not, doesn't change the deal. Those are the dynamics. You have to consider all and each one as you and I -- as you run through a hypothetical negotiation.

You look at the business impact from the use of

Blaze Advisor. The level of effort to impact or stop use, that means in the period of time that the client has the license, that the infringing user has the licenses, going to get off Blaze Advisor eventually, does that mean that FICO has to provide more support services to make that transition or not? Some clients, not. Some clients, yes. So if FICO has more obligations because of the nature of the client, well, then, yes, it changes the dynamic. What's the product support effort, change it up or down, and the up-front committed term.

As he is saying here, if the term is three to five years, okay, that's pretty normal. If the term is three years or one or two, then I really have no incentive to reduce my price because it's such a short-term deal.

So that is evidence that we presented with respect to how a negotiation might happen and the factors that would influence it.

FICO also will license on a new business basis. I don't think it's this hypothetical, but let's look at the factors so you can consider them.

If the negotiations were with a brand-new client, well, then the possibility of more revenue stream and more products, that would be a factor. The opportunity to sell more products would be a factor.

Well, the size of the transaction would be a

factor, but in this lawsuit we know the size of the transaction. We know it's for the infringing period of use, and we know the number of applications. So that becomes neutral.

The duration of the contract, four to five years. Neutral. Maybe a little discount. Professional services revenue, not applicable. Doesn't change the needle in this arrangement.

Other factors you might consider is what, how was Blaze Advisor used in the business? How important was it to the business? Was Blaze Advisor, if you recall Mr. Baseman's testimony when he was valuing, was Blaze Advisor connected to revenue-generating events? That was his phrase.

Well, connected to the sales of insurance policies is a revenue-generating event. What, what is the evidence that we have from the defendants?

Well, we have other license agreements from the 2006/2007 time frame. We have other license agreements from a period of time when, it's undisputed testimony, that discounting was much more aggressive than it is now, and as I mentioned, Mr. Folz enjoyed that heavy discounting in 2006 because he said he got a good deal.

A license agreement that might be more comparable to the 2016 time frame is this one in 2019. The [redacted]

agreement, and by the by, when you look at the other license agreements, it's going to be important to look at what the scope is. To say it's a two million dollar license agreement, what does that mean if it's for one application?

You have to know what the scope is to match the dollars. Well, what's [redacted] license agreement? Well, the scope is one application. How much was it when you put in maintenance? [redacted]. How much was it before maintenance? [redacted], for one application.

What was the term of [redacted]? Five years. If you want a comparable license agreement to the named application license fees that I just went through in terms of FICO's standard pricing, it's the [redacted] one.

Now, FICO, as you've heard, will in its methodology, standard practices, price on what is called an enterprise basis. There is, there is a similar pricing to value.

You get an enterprise price, but we're talking about a term deal, a limited number of years, four or five. Well, how do you convert the enterprise price to a year? It's that [redacted] figure, and so if you use that math, you have an annual fee, plus an annual maintenance of 5,896,260 per year, and if you apply that out over the five years, it's a 29,481,300.

Like I said, what the fair price is in the market

from a hypothetical negotiation is your consideration. What we have given you is information that we have about the dynamics that go into those negotiations, about what the standard FICO pricing is if you go on a named application basis, about what the standard FICO pricing is if you do an enterprise basis and convert it to annual.

We have given you the information that we have. What has the defendant given you? Old license agreements, without an explanation of scope, that don't apply to 2016.

So let me turn to this issue of disgorgement. As I've said, this matter of profits is not compensation to FICO. It's what the copyright law does to protect the creative work of authors, people like Marce, screen writers, novel writers, people who make original works of authorship. Our laws protect that.

The instructions are going to be important to you, I submit, in this regard: Because it distinguishes between what FICO must prove and what the defendants must prove. In my version of the instructions, it's page 25 that sets out FICO's burden, and FICO's burden is to identify defendants 'revenue that are attributable to the infringement.

FICO has done that. How did we do that? We did it through the mechanisms of the litigation. We asked the defendants to swear under oath to us the number of policies and the dollar value of those policies that not only went

through an application that contained Blaze Advisor, but that used Blaze Advisor.

And Mr. Harkin, the CFO, said, "The data reflects the policy count and associated gross written premium and writing company that ran through the applications you listed and used the Blaze Advisor software."

That fact, "And used the Blaze Advisor software," wasn't noted earlier. I asked, why talk about Marce? Why talk about Baseman? Why talk about people who have nothing to do with this question of tying the revenues and the policies of defendants to their use of Blaze Advisor?

Of course they don't know. How in the world could they, but we had to ask the defendants to go into their systems and give us that information, and they did.

Now, not only that, but we know now from the litigation what the Blaze Advisor rule capability was for each of those applications. It wasn't sitting there for no reason, and we can read down that, and I won't now, but CSI Express, one of the big ones, predictive modeling, policy scoring.

What did the underwriters in the last couple days tell us? More information is better information. Better underwriting for better information. We used Profitability Indicator to get better information.

We go through the rules, Blaze rules capabilities

on the whole screen, and we see that Blaze Advisor is bringing those -- is being used in that way in bringing value to the process of selling insurance. We have it on policy administration systems. That's most of them.

Utility systems are in support of policy administration systems. Get the right underwriter to the right applicant at the right time, for example.

Compliance systems are a necessity, if you're going to sell insurance and stay out of jail. So what were the reasons that they wanted to adopt Blaze Advisor?

Well, we know this from the documents. Here's time and cost, revenues -- business applications, get to the market faster. I won't read all of these. Consistency and compliance, elevate all decision-making. That's why they did -- why did they keep it for ten years? Because they were realizing all these values.

We looked at some case studies, and I will just do a couple. What were the business objectives here? Move right business into automated renewal. We heard if you don't renew your policies, your business suffers.

Critical to renew insurance policies and keep those customers. Move the right business into automated renewals. Increase retention of the best accounts.

Revenue generating. Get rid of the unprofitable accounts. Revenue saving. Create efficiencies for

underwriters so they can go out and sell and so on.

Mr. Mirolyuz said to us in his testimony, those benefits were realized. Another case study is this one. Again, it sets out the benefits and under the plus/delta what the defendants say themselves, "The defined business benefit was realized."

Mr. Whitener wasn't pretending to be a Blaze Advisor expert. He was in fact, an insurance company expert that says, I want to sell insurance. How does this Blaze Advisor technology make it better, make it better, contribute, make some contribution to the revenue of selling insurance?

And he went through these qualities in some detail, but it does make speed to market faster. Speed of response to customer, faster. And as Mr. McCarter said to me, if I can respond to renewal offers faster, I will have an increased percentage of renewals.

Consistency of decision-making is important. We don't get a different answer from a different underwriters. Ease of doing business was important. For many of the underwriters saying what a relationship business it is with the agents or brokers.

Scale, you can't handle the value in the mid market and small market without the technology of Blaze Advisor, which brought all of those benefits. So in summary

what Mr. Whitener said, "Blaze Advisor added significant value to the defendants' process of executing the bind, book, issue, is how I described the process of selling insurance where deployed."

I have tried to make the point throughout the trial. When I have come up to examine a witness, what I wanted to do was talk about what the lawsuit is about and not what the lawsuit is not about, and I want to make that point again here.

In terms of the disgorgement, I'm only talking, not only because it's a lot of money, but I am talking only about that 21 billion dollars of revenue that in fact used Blaze Advisor. When Mr. Schraer was talking about how important it is to do a high touch, sophisticated, subjective underwriting process, I'm sure it is in that case.

I'm only talking about the underwriting processes that are automated through Blaze Advisor, not Mr. Schraer's other case. So we have the 21 billion dollar number, and these are the applications that used it over the years without permission from FICO.

This is all of the years of the infringing revenue. We have the Canadian application because that infringement was also in the United States. As Mr. Pandey said, that's software was sitting in a server in Raleigh,

North Carolina. So that copyright infringement was in the United States as well.

It's a lot of money, as I've said. This is the revenue that the defendants have over that same period of time.

So now it becomes important to look at what the defendants' burden of proof is, and you'll find that in the instruction. On my copy it's on page 26.

The defendants, not FICO, this is what the copyright act says, not FICO. The defendants move prove the costs that are associated with the infringing revenue. Okay? Gross revenue, you want to know what the profits are. You've got to deal with costs.

You've got to deal with costs, and it's for the defendants to deal with costs. So what information did they bring to you?

Well, this is Mr. Bakewell's analysis. He gives you information of costs for 2016, 2017, 2018. Why is there nothing for 2019 and 2020? Because they did not bring the information to you. We know from the testimony of at least Mr. Zoltowski, if not Mr. Bakewell as well, that 2019 information was available. Why didn't they analyze it? Why didn't they present it to you?

The fact of the matter is, I don't know. The fact of the matter is, they didn't. They did not bring forth

under their burden of proof any cost information for 2019 or 2020.

Now, in the jury instructions to you, there is this issue of the burden of proof, the preponderance of the evidence. I'm only saying that a fact has to be proven by the greater weight of the evidence.

Having no facts, having no evidence, proves nothing? What else does the instruction say is the defendants' burden of proof? It is the defendants that must prove the portion, if any, of profits that arise from the infringement by identifying the contribution to the profits and elements, other than the infringement.

Going back to FICO's burden of proof, FICO has to prove that there is a contribution, some amount of contribution to the revenue. Defendants' burden, it's the defendants who have the burden of doing this measuring. What's the amount of those profits that come from other factors?

Our witnesses were asked repeatedly about, did you measure, did you measure, what was the impact. Under the instructions and the law, that's not FICO's problem. That's the defendants' problem.

They have to measure. They have to judge that impact. That's their burden of proof to come forth with the portion of profits that arise from other factors.

Well, what do they offer us on that? They offer us the pillars, and -- but that's it. Now, let me be clear about FICO's position. Of course there are factors, other than the infringing use of Blaze Advisor, that contributed to the revenue. Of course.

Of course reputation matters. I wouldn't argue otherwise. Of course the business logic of the company matters. Mr. Baseman said that from the first day. Blaze Advisor is a tool that automates all that logic, brings it together in a repository, adds all kinds of business value, not the beginning point as a company.

None of that is, am I arguing about or am I quarreling about. I am only asking, where is the evidence? The jury instructions, the jury instructions also say to us and say to you, a decision cannot be based upon guessing, and a decision cannot be based upon speculation. Speculation is not a decision in a court of law. Decisions are supposed to be made on evidence.

The defendants simply didn't do the hard work to bring to you evidence of what that portion should be that relates to factors other than the infringement. Now, it may be, and let's say, let's say the defendants had brought forth evidence.

Well, maybe the evidence would show that 80 percent of those profits are due from things that were on

the pillars. Maybe. Maybe not. We don't know.

We know there is something, but without evidence, we're put in a position to guess and speculate, and we're not permitted to do that. You know, in golf, you say play it where it lies. Another saying might be, sleep in the bed you made. The Court says, can't speculate.

So let me turn to the verdict form just to walk that through from my point of view, from FICO's point of view. I've got it here. So you're going to be asked that first question: Was there a breach of paragraph 3.1? I think as I've described, I think it's beyond doubt, frankly.

Next, was there breach of paragraph 10.8? Again, I think the right answer is, yes, for FICO.

They said they were going to use it every which way they wanted to inside of the big organization, and they did.

And number 3. Did FICO properly terminate the license agreement? That proper termination question brings to bear in terms of the paragraph 3.1 violation, 9.2(c). FICO can properly terminate based upon 3.1 immediately just because there is a violation of the license granted by the agreement, 3.1.

With respect to the breach of 10.8, FICO can terminate the license agreement because the breach was material. Not getting FICO's consent to the continued use

of Blaze Advisor in a 30 billion dollar organization went to the very core of the purpose of paragraph 10.8.

Now I want to point out to you question 5, and what I particularly want to point out to you is the note. If you answered yes to question 3, the license agreement was properly terminated, then there was copyright infringement. It follows like night and day.

Similarly with number 6. That is to say, when you answer the actual, the loss license fee amount for 4, the same amount will be for 6 under The Copyright Act. FICO doesn't say otherwise. Same amount.

Now I think the rest are, talked about the proof of, the proof of ACE American's liability for infringement. The dollar amounts. I've talked about the profits and what FICO's burden is is the revenue, number 9.

And then you put in an amount, 10. And then 11, that's where the defendants' burden comes in.

What are the costs? Have they proven any? For what years? Have they proven any apportionment?

Now, if you find in favor of FICO for any of those reasons, 1, 2 or 3, you don't have to bother with part 4, but I want to make only this comment about part 4: As it says here, it's defendant -- it's Federal's claim against FICO. In the argument it was called defendants' claim. Actually it's Federal's claim.

You recall that Federal stopped -- you recall that Federal used Blaze Advisor unchanged from the moment the license agreement terminated until December 31, 2016. On January 1, 2017, no employees at Federal.

Federal incurred zero damages, zero costs. Federal incurred nothing with respect to migrating away from Blaze Advisor because it didn't.

The testimony of Mr. Ghislanzoni when in 2019 and then into 2020, ACE American got around to taking Blaze Advisor out of the systems, that's a different kettle of fish. It's not damages because FICO didn't do -- wasn't responsible for it, but it certainly isn't Federal's damages because it was incurred by ACE American.

So I've had my, I've had my say on behalf of FICO, but I want to conclude simply by saying this: I mentioned during the, again, during the jury selection process that I think it's, I think it's a great honor to directly, to directly participate in our country's rule of law.

And I thank you for your service.

MS. GODESKY: Your Honor, may I approach?

THE COURT: You may.

(Side-bar discussion.)

MS. GODESKY: Your Honor, we have an objection to one of the arguments made by Mr. Hinderaker when he put up the numbers on the screen relevant to the actual damages

claims idea of hypothetical license fee. He said something like, you may say that's a big number, but I say that's a lot of applications that you're using without permission.

And so that is a direct infusion into the hypothetical negotiation this concept that you're using the software without permission. You are an infringer, and you're negotiating to continue your use of Blaze without a license.

And that was made even worse by the fact that he referred to the period of time that the infringing user needs a license, how much will people improve their position with the dynamics in place at the time.

So all of this is what we were trying to avoid by moving to exclude this type of testimony from Mr. Waid in the first place, but certainly in the boundaries of what you told us we could argue.

You can't say, you had a lot of applications you were using without permission. That's not the context of this negotiation. So we would request a curative instruction.

MR. HINDERAKER: May I go get your instructions, Your Honor?

THE COURT: You may.

MR. HINDERAKER: Because I was just using your words. Actual damages. The willing buyer and willing

seller would have negotiated for the allegedly improper or infringing use that was made. I'm just using your language.

THE COURT: Well, here's where we are. I do -- it's pretty clear that the fact of infringement cannot be considered in arriving at the actual damage -- it's clear that the fact of infringement is not a factor that can be used in the hypothetical negotiation.

And so the instruction is intended to say, or does say, for the use that was made.

What I will do is, I will repeat the instruction, at least in part, to say that it is what a willing seller and a willing buyer agreed to.

MR. HINDERAKER: I obviously have no quarrel with that. I was trying to follow the instruction.

THE COURT: Understood.

MR. HINDERAKER: Yeah. Thank you.

MS. GODESKY: Thank you.

(In open court with the Jury present.)

THE COURT: Members of the Jury, in a second I'm going to give you the final instruction, but while I'm looking for one thing, go ahead and stand up and stretch.

We're five minutes or so from being done. Okay?

(Pause.)

THE COURT: Counsel, if you will both approach.

(Side-bar discussion.)

THE COURT: I am going to add a sentence that says, "The fact that one party is alleging infringement may not be considered." That is the law.

MR. HINDERAKER: The fact that one party is considering infringement is a fact that must be decided by the jury, yeah. No problem.

MS. GODESKY: Thank you.

(In open court with the Jury present.)

THE COURT: All right. Members of the Jury, I am going to repeat an instruction and elaborate on one aspect of it that I gave you earlier before the closing arguments.

And that is to this determination of actual damages in the hypothetical negotiation. The measure of actual damages for FICO's breach of contract claim and its copyright-infringement claim is the fair market value of a license to use Blaze Advisor.

The fair market value is the license fee that a willing buyer and a willing seller would have negotiated for the use that was made. The fact that one party is alleging that the use was infringing or improper is not to be considered in determining the outcome of that hypothetical negotiation.

All right. Here is your final instruction:

There are the rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

Second, your verdict must be the unanimous decision of all jurors; therefore, it is your duty as jurors to discuss the case with one another in the jury room.

You should try to reach agreement if you can do this without going against what you believe to be true.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should.

But do not come to a decision just because other jurors might think it's right or just to reach a unanimous verdict. Remember, you are not for or against any party. You are judges, judges of the facts. Your only job is to study the evidence and decide what is true.

Third, during your deliberations, including during any recess taken during deliberations, you must not, directly or indirectly, communicate with or provide any information to anyone by any means or by any medium about anything related to this case until I accept your verdict and discharge you from further service in this case.

Fourth, as stated in my instructions at the beginning of the trial, you may not in any manner seek out or receive information about the case from any source, other than the evidence received by the Court and the law of the case I have provided to you. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have.

In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom, otherwise your decision may be based on information known only by you and not your fellow jurors or the parties in this case. This would unfairly and adversely impact the judicial process.

Fifth, if you need to communicate with me during your deliberations, send me a note signed by the foreperson. Give the note to the court security officer, and I will answer you as soon as I can, either in writing or in here in court. While you are deliberating, do not tell anyone, including me, how many jurors are voting for any side.

Sixth, nothing I have said or done is meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. I will now read the form to you.

Question 1. Did FICO prove that Federal breached Section 3.1 of the license agreement by allowing third-party consultants DWS and/or AppCentrica to use Blaze Advisor? Answer "yes" or answer "no."

Question 2. Did FICO prove that Federal breached Section 10.8 of the license agreement? Answer "yes" or answer "no."

Question 3. Did FICO properly terminate the license agreement on March 30th, 2016? Answer "yes" or answer "no."

Instruction: If you find in favor of Federal on Question 3, skip the remainder of Part I and go to Part II, FICO's claims against ACE American. Otherwise, answer the remainder of Part I as instructed below.

I will now read the remaining questions of Part I.

Question 4. If you find that FICO properly terminated the license agreement, please enter the amount of damages FICO incurred as a result of Federal's use of Blaze Advisor after March 31, 2016.

Question 5. Did FICO prove that Federal infringed FICO's copyright by use of Blaze Advisor after March 31, 2016? (Note: If you answered "yes" to Question 3 above, you must answer "yes" to this question.)

Question 6. If you have found that Federal infringed FICO's copyright, please enter the amount of

actual damages FICO suffered as a result of Federal's infringement. (Note: Your answer to Question 4 and Question 6 must be the same.)

Part II: FICO's claims against ACE American.

Question 7. Did FICO prove that ACE American infringed FICO's copyright by use of Blaze Advisor? Answer: Yes or no.

Question 8. If you have found that ACE American infringed FICO's copyright, please enter the amount of actual damages FICO suffered as a result of ACE American's infringement of its copyright.

Part III: Profits.

Question 9. If you have found that either defendant infringed FICO's copyright, did FICO prove that this infringing use contributed to the revenues of the infringer? Answer: Yes or no.

Question 10. If you answered "yes" to Question 9, enter the amount of revenue to which the use of Blaze Advisor contributed.

Question 11. Enter the amount of profits that are not taken into account by computing FICO's actual damages in your answers to Questions 6 and 8.

Instruction at the end of Part III: If you found in FICO's favor on Question 3 above, do not answer any questions in Part IV, but sign and date the verdict form

below.

Now, I will read the three questions of Part IV.

Part IV: Federal's claims against FICO.

Question 12. Did Federal prove that FICO breached Section 9.2 of the licensing agreement by terminating the agreement? Answer: Yes or no.

Question 13. Did Federal prove that FICO breached the implied covenant of good faith and fair dealing? Answer: Yes or no.

Question 14. If you have found that FICO breached the contract or the implied covenant in answer to either Questions 11 or 12 above, please enter the amount of damages that Federal incurred as a result of FICO's breach.

That is the verdict form that you will receive.

You will take this form to the jury room; and when you have all agreed on the verdict, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.

All right, Terianne.

THE CLERK: Would the jury please rise and raise your right hand.

(Jury sworn.)

THE JURY: I do.

THE CLERK: Raise your right hand.

(Bailiff sworn.)

THE BAILIFF: I do.

THE COURT: I can tell you that looking at what I'm looking at, the problem has been remedied. It will take some time for the temperature to decrease.

THE CLERK: All rise for the jury.

(Jury exits.)

(In open court without the Jury present.)

THE COURT: Be seated.

So just a cautionary word to all of you. The jury is being taken down to the Federal Cafe in this building. That is how we feed them.

So, please, all of you, don't go down to the Federal Cafe. And why don't you wait here for ten minutes to make sure they've had time to get down there. Okay?

We can go off the record.

(Off-the-record discussion.)

(In open court without the Jury present.)

THE COURT: With that, we're in recess. Okay. We will be in touch.

(Recess taken at 1:23 p.m. till 3:37 p.m.)

IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: Please be seated.

Let me tell you what the process is that I'm going to follow.

We have received two questions from the jury. I am going to tell you what the questions are and tell you what my answer is going to be to the jury regarding those questions. You can put objections on the record, if you have an objection to my response.

So the first question was: Can we get judge's original uncontested facts?

I have marked and I plan to give them joint, what I have marked as Joint Exhibit 3, which is the parties' amended joint statement of uncontested facts.

Question two: Bill Waid's testimony, can we get a copy?

My answer will be: I cannot provide you a transcript of any testimony. You must make your decision based on what you recall of the evidence. You may, of course, use your notes to refresh your recollection.

So, Mr. Hinderaker, does FICO have any objection to those answers?

MR. HINDERAKER: No, Your Honor. They seem to be appropriate answers to me.

THE COURT: Thank you.

Ms. Godesky, any objection on behalf of Federal and ACE to those answers?

MS. GODESKY: No objection.

THE COURT: Okay. I will put them on the note I received, put it in the envelope, have it delivered to the jurors.

So did you come a long way, all of you?

MS. GODESKY: No.

MR. HINDERAKER: No.

THE COURT: We will keep you informed.

MS. GODESKY: Thank you.

THE COURT: Thank you.

(Recess taken at 3:39 p.m.)

* * *

We, Kristine Mousseau and Renee A. Rogge, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: /s/Kristine Mousseau
Kristine Mousseau, CRR-RPR

/s/Renee A. Rogge
Renee A. Rogge, RMR-CRR